IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION FOUR

CHURCH OF SCIENTOLOGY, INTERNATIONAL,)
Plaintiff/Respondent,)
)
vs.)
)
GERALD ARMSTRONG,)
Defendant/Appellant.)

NO. A075027

CLERK'S TRANSCRIPT ON APPEAL

FROM A JUDGMENT MADE AND ENTERED

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

MARIN COUNTY COURTS

VOLUME 34

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IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

MARIN COUNTY COURTS

DEPARTMENT 1

CHURCH OF SCIENTOLOGY, INTERNATIONAL, Plaintiff, vs. GERALD ARMSTRONG, Defendant.	No. 157680

GARY W. THOMAS	JUDGE
JOHN P. MONTGOMERY	COURT EXECUTIVE OFFICER
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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF MARIN

CHURCH OF SCIENTOLOGY INTERNATIONAL, a California not-for-profit religious corporation,

Plaintiff,

vs.

GERALD ARMSTRONG, et al.,

Defendants.

CASE NO. 157 680

[CONSOLIDATED]

CHURCH OF SCIENTOLOGY INTERNATIONAL'S MEMORANDUM OF POINTS AND AUTHORITIES IN OPPOSITION TO ARMSTRONG'S "AMENDED" MOTION FOR RECONSIDERATION OF ENTRY OF PERMANENT INJUNCTION; REQUEST FOR SANCTIONS AGAINST ARMSTRONG AND HIS ATTORNEY, FORD GREENE

DATE: Dec. 1, 1995
TIME: 9:00 a.m.
DEPT: 1
JUDGE: Hon. Gary W. Thomas

TRIAL DATE: Vacated

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I. INTRODUCTION

Code of Civil Procedure Section 1008 permits a party to bring a motion for reconsideration only on the basis of "new or different facts, circumstances or law." No new facts, circumstances or law form the basis for defendant Gerald Armstrong's motion herein. Rather, Armstrong's attorney candidly admits that he has brought this motion in a fit of pique "because the Court cut me off and prevent me (sic) from making the record required for appeal and because I believe that this Court's order is, in fact, erroneous." [Ex. A to Declaration of Laurie J. Bartilson, Declaration of Ford Greene dated November 2, 1995][1]

There is absolutely nothing presented in the rambling and vitriolic "amended" motion for reconsideration which is both new and relevant. Rather, Armstrong and his attorney merely re-argue the same issues, based on the same "evidence" which they argued before. As "new law," for example, they cite an interim summary adjudication ruling by a New York district court in an unrelated libel case. Not only has the case no precedential value, it decides absolutely nothing relevant to this Court's Order of Permanent Injunction dated October 17, 1995 ("Order of Permanent Injunction").

As a "new fact," they point to Armstrong's obligation to litigate the bankruptcy action which he filed. However, the adversary complaint in that action has been pending since July 11, 1995 [Ex. B to Bartilson Dec.]. On August 29, 1995 it was set for trial. [Bartilson Dec., ¶ 8.] Any commensurate obligation to produce evidence in that case was well known to Armstrong at the time that the original summary adjudication was argued, and cannot now be called "new."

Moreover, as demonstrated below, Armstrong has no need to discuss Scientology with anyone in order to litigate that action. The issues which it presents concern Armstrong's dissipation of assets following his settlement with the Church, not his Church-related activities. The bankruptcy court has made it crystal clear to Armstrong that it has no intention of permitting him to re-litigate in that forum matters which have already been litigated here.

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[1] Plaintiff attaches Mr. Greene's original declaration as an exhibit because of the unusual manner in which Armstrong and his counsel have made this motion. In an apparent effort to comply with Section 1008's requirement that a reconsideration motion be made within 10 days after service of written notice of entry of an order, Mr. Greene filed a motion for reconsideration on November 2, 1995, and set it for hearing on December 1, 1995. Thereafter, on November 16, 1995, he filed an "amended," motion which contains additional argument and exhibits, in contravention of Section 1008. Plaintiff is therefore uncertain whether Mr. Greene's initial sworn statement will be before the Court, and has therefore attached it again to its evidence.

With no new facts or law presented, this court is without jurisdiction to hear Armstrong's motion. Nor is the substance of Armstrong's argument concerning the injunction itself strengthened by repetition here. Armstrong fills at least 4 pages with quotations, taken out of context, from old opinions which criticize the Church or other Scientology entities. The record of the summary adjudication motion is replete with such references; indeed, the record of this entire case demonstrates that Armstrong's main effort has been to convince the Court that the Church is "bad," and should lose for that reason alone. He devotes 2 pages to a rambling argument, previously rejected by this Court and by the Honorable David Horowitz in Los Angeles, that the Court should add a clause to the contract at issue herein, determine that the Church breached that (non-existent) clause, and then excuse Armstrong's breaches for that reason. No new evidence or law is offered here. He spends 6 pages re-arguing his contention that an injunction violates the his First Amendment rights. So far, three trial judges and the Court of Appeal have rejected this argument. Armstrong adds nothing new, but simply asserts for page after page that it violates his religious beliefs to be enjoined.

Armstrong's motion for reconsideration must be denied. Armstrong and his counsel should also be sanctioned for bringing the motion simply because they "believe that this Court's order is, in fact, erroneous." This is a blatant abuse of C.C.P. §1008, and yet another effort to unduly prolong these proceedings. Moreover, none of the substantive arguments made justify reversal or modification of the Order of Permanent Injunction.

II. STATEMENT OF FACTS

Armstrong has selectively omitted many pertinent facts from his motion for reconsideration. For example, the history behind the Order of Permanent Injunction is revelatory of Armstrong's bad faith in bringing this motion for reconsideration, solely for purposes of delay:

On March 2, 1993, plaintiff Church of Scientology International filed its first motion for summary adjudication of its claim for permanent injunction. Armstrong did not respond to that motion; instead he sought and obtained a 14 - month stay of the proceedings while he appealed the trial court's Order of Preliminary Injunction. That Order was upheld on appeal on May 16, 1994 Dec., ¶2; Exhibits C & D thereto]

On February 23, 1995, plaintiff filed its amended motion for summary adjudication of its claim for permanent injunction. It was originally set for hearing on March 31, 1995. [Ex. E to Bartilson Dec.] Armstrong filed no fewer than 3 applications to continue the hearing on the motion to allow himself more time to respond. He even fired his attorney, Mr. Greene, so as to present to the Court additional reasons why he should be permitted to continue the hearing. [Bartilson Dec., ¶3.] Finally, he did file opposing papers -- late -- on April 7, 1995. [Id.]

The day before the Court was set to rule on the motion, however, Armstrong filed a petition for bankruptcy, staying the proceedings, and forcing the Church to obtain relief from stay in order to get a hearing on the pending motion. [Id.]

The motion was re-set for hearing on September 27, 1995. Greene, returning to the case on Armstrong's behalf, was permitted to file voluminous additional opposing papers on September 15, 1995. In addition, Armstrong himself filed further "evidence" in opposition to the motion on September 20, 1995. [Id.] The Church's application to present additional evidence of Armstrong's most recent breaches of the Agreement, however, was denied. [Id., ¶5]

Finally, on October 6, 1995, this Court heard extensive oral argument, and granted plaintiff's motion. Greene refused to conclude his remarks, continually interrupting the Court in his efforts to continue argument. [Ex. A to Greene's Second Declaration, p. 14-16.]

Plaintiff's counsel prepared a proposed Order that very day in accord with the Court's ruling. [Bartilson Dec., ¶6.] However, Greene refused to review the proposed order, and made no effort to object to it in any way. [Id., ¶6.] Finally, plaintiff's counsel sent the proposed Order to the Court. The Court, after careful review, and requiring several revisions, entered the Order on October 17, 1995. [Id., ¶7.]

III. ARGUMENT

A. Armstrong Is Not Entitled To Reconsideration Of the Permanent Injunction Order

Code of Civil Procedure Section 1008 "governs reconsideration of court orders whether initiated by a party or the court itself. 'It is the exclusive means for modifying, amending or revoking an order. That limitation is expressly jurisdictional.'" Gilberd v. AC Transit (1995) 32 Cal.App.4th 1494, 1499 38 Cal.Rptr.2d 626, quoting, Morite of California v. Superior Court (1993) 19 Cal.App.4th 485, 590, 23 Cal.Rptr.2d 666. Moreover, "[a]ccording to the plain language of the statute, a court acts in excess of jurisdiction when it grants a motion to reconsider that is not based upon 'new or different facts, circumstances, or law.'" Gilberd. at 1500. If a party does not provide the Court with new or different facts that are relevant to the merits of the dispute, the Court lacks jurisdiction to entertain the motion. Gilberd, supra, at 1500; accord, Peltier v. McCloud River Railroad Co. (1995) 34 Cal.App.4th 1809, 41 Cal.Rptr.2d 182, 184. Indeed, the First District Court of Appeal recently held that when a party brings a motion for reconsideration which is not based on relevant new or different facts, the resulting order denying reconsideration is not appealable. Alioto Fish Co., Ltd. v. Alioto (1994) 27 Cal.App.4th 1669, 1679-1680, 34 Cal.Rptr.2d 244.

In Gilberd, the trial court granted defendant's motion for reconsideration of various orders permitting the plaintiff to file an amended complaint, and dismissed plaintiff's action. On appeal, the defendant argued that the reconsideration motion was proper because the trial court "misinterpreted California law in its initial decision," and because the trial court had failed to hear oral argument in making that initial decision. The First District Court of Appeal finding "both of [defendant]'s contentions meritless," stated,

> [Defendant]'s first contention is utterly specious. What [defendant] essentially argues is that section 1008 does not apply when the litigant disagrees with the trial court's ruling. Since in almost all instances, the losing

> party will believe that the trial court's "different" interpretation of the law or facts was erroneous, to interpret the statute as the [defendant] urges would be contrary to the clear legislative intent to restrict motions to reconsider to circumstances where a party offers the court some fact or authority that was not previously considered by it.
>
> Second, we cannot accept [defendant]'s implicit interpretation of section 1008 that a "new" or "different" fact or circumstance wholly collateral to the merits of the initial motion is sufficient to warrant reconsideration. While not denigrating the assistance that oral argument can provide to a court, the fact that [defendant] intended to request that the court entertain oral argument with respect to the initial motions is clearly collateral to the merits of the motions.

32 Cal.App.4th at 1500. The Court of Appeal vacated the second set of orders entered by the trial court, finding that it had acted in excess of its jurisdiction in granting reconsideration.

Gilberd is particularly instructive here, where Armstrong's attorney states that his rationale for seeking reconsideration is "because the Court cut me off [in oral argument] and prevent me (sic) from making the record required for appeal and because I believe that this Court's order is, in fact, erroneous." [Greene Dec., ¶3 (sic-7)] It is plain that Armstrong's "new facts or law" are no different from those of the Gilberd defendant: they arise solely from Armstrong's opinion that the court erred in its initial ruling.

Indeed, Armstrong raises no new arguments in the briefing that he provides to this Court in support of reconsideration, but simply expounds on the same arguments that he offered to the Court in October. Whether or not Greene was permitted to argue at length in an oral presentation is, according to Gilberd, "wholly collateral" to the merits of the summary adjudication motion.[2]

In a transparent attempt to comply with the jurisdictional requirement that they provide the Court with new facts or law relevant to the dispute, Armstrong and Greene have, in their amended motion, cited to the following:

1. An interim order of a Colorado district court judge, issued on October 3, 1995, in a copyright infringement case which involves neither of the parties herein, and

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[2] Indeed, according to Gilberd, the result would have been the same if Mr. Greene had made no oral argument at all.

which deals with none of the issues relevant to the summary adjudication motion;[3]

2. An interim order of a New York district court judge, issued on November 14, 1995, in a libel case between the Church and Time magazine, which also deals with none of the issues relevant to the summary adjudication motion;[4] and

3. An order of the Bankruptcy Court in Armstrong's bankruptcy action, issued on October 10, 1995, stating that trial testimony in the action will be taken by declaration and cross-examination.

None of these rulings, however, provide any basis for reconsideration of the Order of Permanent Injunction, because all consist of collateral facts not relevant to the issues actually before the Court. The actions of the New York and Colorado courts in dealing with libel and copyright cases, involving other parties and having nothing to do with Armstrong, are irrelevant. As for the bankruptcy action, Armstrong's concern that the injunction will affect his defense therein is both unfounded and not new. The adversary complaint in that action was filed on July 11, 1995, and the court set the case for trial on February 13, 1996. Armstrong thus knew well before the hearing on the permanent injunction that he would be required to gather and present evidence in that action, and had every opportunity to argue those concerns to this Court. That he chose not to do so does not make the existence of that case a "new fact" supporting reconsideration.

Moreover, Armstrong's contention that the injunction could improperly inhibit his defense in that action is meritless. The issues in the action are not defined by Armstrong's rambling "Answer," but by the adversary complaint [Ex. B]. As can be seen from a review of that document, the issues are clear and straightforward. They concern Armstrong's attempts to defraud his creditors by (1) failing to admit ownership of the Gerald Armstrong Corporation on his bankruptcy petition; (2) fraudulently conveying away his assets after the settlement; and (3) entering into the contract with the Church when he had no intention of honoring it. Armstrong's opinions, viewpoints, fears and religious fervor concerning Scientology are not relevant to any of those issues. The bankruptcy court has already indicated that it will not permit Armstrong to expand the trial in that action into a heresy trial, or to raise any of the issues therein that have already been decided in this forum. Armstrong thus has no need to discuss the matters covered by the injunction with anyone in order to gather evidence that is relevant to the bankruptcy case.

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[3] The only citation to this opinion which appears in Armstrong's memorandum is contained in footnote 7. The case is cited for the proposition -- which is neither new, novel nor relevant -- that the Scientology religion is a subject of public debate. It is both irrelevant and cumulative.

[4] Armstrong's attempt to cite to the Time case is even more remote. In footnote 8, p. 7, he argues that this opinion supports Armstrong's viewpoint that the Church is attempting to "perpetrate a massive fraud on the American Court and the American People." However, even a cursory review of the opinion reveals that the only issue which the New York court considered was whether or not the Church had produced enough evidence to meet the "actual malice" standard presented by a libel case. The case concerned no issues of "fraud;" indeed, even the falsity of the statements made by Time was not an issue considered by the Court.

In short, none of the "new facts or law" presented by Armstrong in defense of his motion for reconsideration are relevant to the issues that this Court had to decide in granting plaintiff's request for summary adjudication. As matters "collateral to the merits of the motion[]," 32 Cal.App.4th at 630, they cannot provide jurisdictional support for a reconsideration motion. Lacking jurisdiction, this Court must deny Armstrong's motion.

B. The Court's Finding That There Was No "Mutuality" Clause In The Integrated Contract As A Matter Of Law Was And Is Correct

Even if the Court decides to permit Armstrong to move for reconsideration, Armstrong has, nonetheless, provided no factual or legal basis for this Court to change its prior ruling. In his motion, Armstrong asks the Court, as he has several times in the past, to add a term to the Settlement Agreement of December, 1986 ("the Agreement," Ex. F), a term which does not exist: an "obligation" on the part of the Church "to maintain . . . silence as to Armstrong." [Amended Memo at 2]

The Agreement, however, does not contain any provision which imposes such an obligation on the Church, but does contain two separate clauses whose clear import is to preclude any attempt to go beyond the four corners of the Agreement.

Paragraph 9, an integration clause, provides,

> This Mutual Release of All Claims and Settlement Agreement contains the entire agreement between the parties hereto, and the terms of this Agreement are contractual and not a mere recital. This Agreement may be

> amended only by a written instrument executed by [Armstrong] and CSI. The parties hereto have carefully read and understand the contents of this Mutual Release of All Claims and Settlement Agreement and sign the same of their own free will, and it is the intention of the parties to be legally bound hereby. No other prior or contemporaneous agreements, oral or written, respecting such matters, which are not specifically incorporated herein shall be deemed to in any way exist or bind any of the parties hereto.

Paragraph 18B further provides that the parties have made no representations not contained in the Agreement, and did not rely on any representation or statement not contained in the Agreement. As this Court will recall from evidence presented in support of plaintiff's original moving papers, Armstrong consulted not one but three attorneys in relation to this Agreement, and signed it happily, on videotape, after confirming to his lawyer, the Church and the Church's lawyers that he understood it fully and agreed with it.

The interpretation of a written instrument is essentially a judicial function to be exercised according to the generally accepted canons of interpretation. Western Medical Enterprises, Inc. v. Albers (1985) 166 Cal.App.3d 383, 389. Extrinsic evidence is admissible to interpret the instrument, but not to give it a meaning to which it is not readily susceptible, and it is the instrument itself that must be given effect. Parsons v. Bristol Development Co. (1965) 62 Cal.2d 861, 865. "The rules of interpretation of written contracts are for the purpose of ascertaining the meaning of the words used therein; evidence cannot be admitted to show intention independent of the instrument." Stevenson v. Oceanic Bank (1990) 223 Cal.App.3d 306, 316 272 Cal.Rptr. 757, quoting 1 Witkin, Summary of California Law, Contracts, §684, p. 617 (emphasis in original). Indeed, the parol evidence rule "generally prohibits introduction of any extrinsic evidence to vary or contradict the terms of an integrated written agreement." Gerlund v. Electronic Dispensers International (1987) 190 Cal.App.3d 263, 270. Testimony of intention which is contrary to a contract's express terms does not give meaning to the contract, but seeks to substitute a new meaning. Such evidence is therefore excluded. Id. at 273.

The federal cases cited by Armstrong are in full accord with these principles and, in fact, support this Court's ruling. In Barris Industries, Inc. v. Worldvision Enterprises, Inc. (1989) 875 F.2d 1446, quoted at length by Armstrong, Worldvision, the distributor of the television program "The Newlywed Game," sought to obtain 30% of the royalties that were made payable by cable re-distributors by statute. However, the contract between Barris, the producer of the game show, and Worldvision, only provided that Worldvision would receive 30% of the royalties received "under License Agreement." Worldvision provided extrinsic evidence of Barris's conduct after the contract was signed concerning Barris's apparent early uncertainty as to whether or not Worldvision was entitled to some of the statutory fees pursuant to the contract.

The district court refused to consider the extrinsic evidence, finding that "[e]ven if the court were to consider parole evidence it would find the proffered parole evidence neither relevant nor admissible to prove any asserted interpretation to which the contract language is reasonably susceptible." 875 F.2d at 1450. When reviewing the district court's order of summary judgment in favor of Barris, the Ninth Circuit concurred, finding that "the compensation clause of the agreement is unambiguous and therefore dispositive." Id. at 1451.

So, here, the evidence offered by Armstrong in this motion (which is the same evidence that Armstrong offered in October, and the same evidence which he offered to Judge Horowitz in July 1994) is "neither relevant nor admissible to prove any asserted interpretation to which the contract language is reasonably susceptible." It consists of contradictory declarations of Armstrong himself, and a declaration of Lawrence Heller which emphatically does not support Armstrong's herculean efforts to re-write the contract nine years after he signed it. Neither create any ambiguity in the plain terms of paragraph 7(D) of the Agreement.[5]

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[5] In the Agreement, Exhibit F, Armstrong is referred to as the "Plaintiff." Paragraph 7(D) of the Agreement provides that "**Plaintiff agrees** never to create or publish or attempt to publish, and/or assist another to create for publication by means of magazine, article, book or other similar form, any writing or to broadcast or to assist another to create, write, film or video tape or audio tape any show, program or movie, or to grant interviews or discuss with others, concerning their experiences with the Church of Scientology, or concerning their personal or indirectly acquired knowledge or information concerning the Church of Scientology, L. Ron Hubbard or any of the organizations, individuals and entities listed in Paragraph 1 above. (continued...)

Armstrong's sworn statements on the subject are, as this Court accurately noted, a lesson in "double speak."[6] When Armstrong opposed the Church's motion for preliminary injunction in 1992, Armstrong argued vigorously that paragraph 7(D) was not enforceable by the Church against him because it was not mutual. In Armstrong's own words, "Paragraph 7D prohibited Armstrong from speaking to others about Scientology, but does not prohibit Scientology from talking to others about Armstrong." [Ex. G, p. 50:25-27]. In his deposition, Armstrong admitted that he knew the provisions of the Settlement Agreement

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[5](...continued)
Plaintiff further agrees that he will maintain strict confidentiality and silence with respect to his experiences with the Church of Scientology and any knowledge of information he may have concerning the Church of Scientology, L. Ron Hubbard, or any of the organizations, individuals and entities listed in Paragraph 1 above. **Plaintiff** expressly understands that the non-disclosure provisions of this subparagraph shall apply, inter alia, but not be limited, to the contents or substance of his complaint on file in the action referred to in Paragraph 1 hereinabove or any documents as defined in Appendix "A" to this Agreement, including but not limited to any tapes, files, photographs, recastings, variations or copies of any such materials which concern or relate to the religion of Scientology, L. Ron Hubbard, or any of the organizations, individuals or entities listed in Paragraph 1 above. **The attorneys for Plaintiff**, subject to the ethical limitations restraining them as promulgated by the state or federal regulatory associations or agencies, agree not to disclose any of the terms and conditions of the settlement negotiations, amount of the settlement, or statements made by either during the settlement conferences. **Plaintiff agrees** that if the terms of this paragraph are breached by him, that CSI and the other Releasees would be entitled to liquidated damages in the amount of $50,000.00 for each such breach. All monies received to induce or in payment for a breach of this Agreement, or any part thereof, shall be held in constructive trust pending the outcome of any litigation over said breach. The amount of liquidated damages herein is an estimate of the damages that each party would suffer in the event this Agreement is breached. The reasonableness of the amount of such damages are hereto acknowledged by Plaintiff."

This paragraph plainly imposes no duty on the Church to do anything. Indeed, the language entirely concerns comment that Armstrong may not make about or concerning the Church and entities and individuals related to the Church. Nothing in the language used even remotely suggests that the this term was intended to be mutual in any way.

[6] "Double speak" is defined by the American Heritage College Dictionary, 3rd Edition, as "deliberately ambiguous or evasive language." This court used the term to describe Armstrong's insistence in a declaration, that his claimed "careful weighing of options" "reflect[ed] the duress [he] was under to sign" the Agreement. The Court apparently considered, quite logically, that the two circumstances are mutually exclusive: someone under "duress" would not have an opportunity to "carefully weigh" his options before signing a contract. As noted infra, no credibility determination occurs when a court assesses statements which a party has made contradicting himself. Armstrong's claimed "upset" with the Court [Mem. at 7, n. 8] is simply a result of his own inconsistencies.

prevented him from disclosing confidential information but that the Church was not subject to those provisions. Indeed, during his deposition, Armstrong expressed the extreme displeasure which he claimed to have felt with his own attorney when that attorney showed him the Agreement, which, as Armstrong read it, "says on its face they can continue to attack you with impunity, Mr. Armstrong." [Ex. H, p. 160:2-15]

The admissions of a party receive an unusual deference in summary judgement proceedings. FPI Development, Inc. v. Nakashima (1991) 231 Cal.App.3d 367, 398. An admission is binding unless there is a credible explanation for the inconsistent positions taken by a party. Id.

Armstrong's later protestations that he thought all along that the confidentiality provision of paragraph 7(D) was mutual thus were correctly disregarded by the Court in ruling on summary judgment. It is well-established that "a party may not rely on contradictions in his own testimony to create a triable issue of fact." Thompson v. Williams (1989) 211 Cal.App.3d 566, 573-574.

The only evidence which Armstrong submitted to this Court on the subject, beyond his own contradictory statements, is a declaration of Lawrence Heller, one of plaintiff's attorneys, dated November, 1989. [Armstrong's Ex. 1(A)(D) to Opposition to Motion for Summary Judgment re: 20th Cause of Action.] Armstrong contends that this declaration supports his alleged "understanding" that the parties intended the confidentiality provisions of paragraph 7 to be mutual. In reality, the declaration of Mr. Heller states only that the parties all agreed not to disclose the contents of the Agreement or the underlying facts of the case being settled, and that this non-disclosure provision was "the one issue which was not debated by any of the parties or attorneys involved." [Heller Dec. ¶¶ 3 and 4] Mr. Heller's declaration does not contradict the written Agreement at all: the Agreement provides in paragraph 18(D) that, "The parties hereto and their respective attorneys each agree not to disclose the contents of this executed Agreement. Nothing herein shall be construed to prevent any party hereto or his respective attorney from stating that this civil action has been settled in its entirety."

Nor does Mr. Heller's declaration contradict or create an ambiguity in paragraph 7(D), the paragraph which Armstrong wishes to rewrite. If Mr. Heller's declaration is to be believed, the truth is that none of the parties -- including Armstrong -- and nor of the attorneys -- including Armstrong's three lawyers -- debated the provision, but adopted it exactly as it reads.

In short, this Court, like the district court in Barris, considered the evidence presented by Armstrong, and correctly concluded that "the proffered parole evidence [was] neither relevant nor admissible to prove any asserted interpretation to which the contract language is reasonably susceptible." Barris, supra, 875 F.2d at 1450. Armstrong has offered no new evidence or law which could properly cause this Court to change that determination. Just as in Barris, the plaintiff was and is entitled to summary adjudication.

C. Armstrong's Additional Arguments Were Properly Rejected By This Court

None of Armstrong's additional re-arguments provide any basis to change the Court's order. Armstrong's First Amendment arguments were dispositively rejected by the Second District Court of Appeal in May 1994, and, on different occasions, by three superior court judges. Nothing has changed since then, other than the tenor of Armstrong's rhetoric, which has become, if anything, even more virulent in its characterizations of his former religion, and distinctly less charitable. This Court has told Armstrong repeatedly that religion is not an issue in this case. For Armstrong to once again attempt to place this Court in the center of a (self-conceived) religious dispute is unconscionable.

Plaintiff declines to make this courtroom a battlefield on which competing religious theories are the casualties. Nothing in the Injunction prevents Armstrong from believing what he will, talking to God daily, or hating the Church vehemently.[7] All it prevents him from doing is that which he agreed to refrain from doing: giving voice to his hate. The

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[7] Armstrong's labeling of his vicious sentiments as "Christianist" is both puzzling and, on its face, contrary to traditional Christian doctrines ("But I say unto you, That ye resist not evil: but whosoever shall smite thee on thy right cheek, turn to him the other also." [Matthew 5:39, Holy Bible, King James Version, p. 857]) However, the injunction does not effect Armstrong's beliefs at all; the prohibition is on speech, and it is based on his own contractual agreement.

Injunction is not a religious document, nor need the Court consult any religious scripture, runes or entrails in order to enforce it. It arises out of a legal contract, conceived of by lawyers, intended to end a garden variety dispute. Armstrong is bound by it regardless of his religious beliefs, then or now.[8]

Armstrong's remaining arguments are equally repetitious and unavailing. The Injunction does nothing more than enforce the Agreement which Armstrong made in 1986. Armstrong has been prevented since 1986 from acquiring documents concerning Scientology, talking to people about Scientology or working on anti-Scientology cases. The Agreement in this regard is clear, concise and unequivocal. That Greene chose to hire Armstrong to work on anti-Scientology cases in the face of the Agreement, of which he had full notice, and chose to have Armstrong amass his anti-Scientology library is not this Court's problem. It is a situation created entirely by Armstrong's own wrong-doing, encouraged and aided by Greene. Since at least 1992, Greene has been on notice of plaintiff's rights under the Agreement, and of plaintiff's intention to fully enforce those rights.[9]

As for Armstrong's professed dilemma that the documents from this action are now publicly available, but not to him, the Church would be happy to stipulate to the sealing of this Court's records. Indeed, sealing these records would be consistent with the terms and conditions of the Agreement (which sealed the records of the underlying case, from which Armstrong quotes so heavily in his memorandum). The sealing of the records of the underlying case by the Agreement was upheld by the Second District Court of Appeal in the very decision which Armstrong cites, Church of Scientology of California v. Armstrong

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[8] Armstrong's argument that to be "sued, enjoined, and jailed" because of the Agreement violates his religious beliefs is equally specious. It might behoove Armstrong and Greene to take heed of Matthew 5:25: "Agree with thine adversary quickly, whiles thou are in the way with him; lest at any time the adversary deliver thee to the judge, and the judge deliver thee to the officer, and thou be cast into prison." [Holy Bible, supra, at 856]

[9] Armstrong's "restraint of trade" argument was first made before Judge Sohigian, and rightfully rejected. Nothing prevents Armstrong from engaging in any profession -- paralegal, secretary, author, artist, "runner against trash," or whatever he desires. The limitations that he not work on anti-Scientology cases, and that he not discuss Scientology, do not prevent him from working in those professions or any others.

(1991), 232 Cal.App.3d 1068-1070. In the words of the Court of Appeal, "the parties had the right to rely on the sealing order." Id. at 1070. Just because Armstrong has chosen to violate the sealing order, along with his other wholesale violations of the Agreement, is no reason for this Court to legitimize those breaches. However, even absent an order sealing the records of this Court, the fact remains that the world has not agreed to relinquish possession of the documents in question, but Armstrong has. His files, and those amassed by his attorney[10] in connection with this case, must be returned to the Church.[11]

D. Armstrong And His Counsel Should Be Sanctioned For Bringing This Motion In Contravention Of The Code And In Bad Faith

Code of Civil Procedure Section 1008 (d) provides that a violation of Section 1008 "may be punished as a contempt and with sanctions as allowed by Section 128.5." Courts have not hesitated to sanction parties and their lawyers who attempt to relitigate decided issues, e.g., Taylor v. Varga (1995), ___ Cal.App.4th ___, 43 Cal.Rptr.2d 904, 911. In Taylor, the defendant moved for relief from default. After that motion was denied, the defendant brought a second motion to set aside the default, basing the second motion on a different code provision. The trial court denied the second motion and imposed sanctions against the defendant and defendant's counsel in the amount of $2,100. In upholding the sanctions order, the Court of Appeal stated,

> The duplicative nature of the request was sufficient to justify the sanctions imposed. Neither the court, litigants, nor opposing counsel should be subject to such sequential efforts to challenge rulings. This type of duplicative proceeding is not to be encouraged. Sanctions were properly imposed.

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[10] Greene's arguments that he, as Armstrong's counsel, should not be bound by the Injunction, or that the Injunction will restrict his legal practice, are specious. If Greene amassed files jointly for Armstrong and other clients, he did so in violation of the preliminary injunction which has been in place since May, 1992. So long as Greene is acting as Armstrong's agent, with full knowledge of the Agreement, the Preliminary Injunction, and the Permanent Injunction, he is responsible for compliance in all respects.

[11] Armstrong is apparently relying on the filing of this motion for reconsideration as his excuse from not complying with the Order of Injunction. Pursuant to that Order, Armstrong was to return all documents to the Church within twenty days of the Order. Despite demand [Ex. I], Armstrong and Greene have not returned a single document.

43 Cal.Rptr.2d at 911.

So, here, Armstrong and his counsel should be sanctioned for the "duplicative nature" of this motion. The Court is not required to entertain duplicative requests such as this one, nor is Armstrong entitled to a second determination of plaintiff's summary adjudication motion. After all, that motion was fully and thoroughly briefed, over a months-long period, at Armstrong's request. "Because the Court cut me off and prevent me (sic) from making the record required for appeal and because I believe that this Court's order is, in fact, erroneous," [Greene Dec.,supra] are insufficient reasons to destroy the time of all concerned with a duplicative motion. Plaintiff accordingly requests that Armstrong and his counsel, Ford Greene, be sanctioned in the amount of $1,600, to be raised to $2,400 if plaintiff's counsel is required to appear for an oral argument on this motion [Declaration of Laurie J. Bartilson, ¶10]. The Church also requests that Armstrong and Greene be ordered to comply with the portion of the Order of Permanent Injunction requiring them to return documents to plaintiff forthwith, and that a consecutive fine be imposed for every day on which they choose to remain in non-compliance.

IV. CONCLUSION

Armstrong has raised no new or different facts in support of his motion for reconsideration. Consequently, this court lacks jurisdiction to make the order which he requests. Moreover, all of the arguments which Armstrong makes in support of his motion lack merit. It would appear that this motion has been filed for purposes of delay, to augment an already bloated record, and to avoid compliance with the Court's clear order. Under these circumstances, plaintiff requests that the Court: (1) deny the motion for reconsideration; (2) award plaintiff sanctions against both Armstrong and Greene in the amount of $1,600, to be increased to $2,400 if plaintiff is required to appear to respond to oral argument; and (3) order Armstrong and Greene to comply with the paragraph 1, page 7 of the Order of Permanent Injunction forthwith, or pay to the Court a fine of $200 per day for every day on which they choose to remain in non-compliance.

Dated: November 22, 1995 Respectfully submitted,

MOXON & BARTILSON

By: Laurie J. Bartilson
Laurie J. Bartilson

Andrew H. Wilson
WILSON, RYAN & CAMPILONGO

Attorneys for Plaintiff
CHURCH OF SCIENTOLOGY
INTERNATIONAL

PROOF OF SERVICE

STATE OF CALIFORNIA)
) ss.
COUNTY OF LOS ANGELES)

I am employed in the County of California, State of California. I am over the age of eighteen (18) years and not a party to the within action. My business address is 6255 Sunset Boulevar, Suite 2000, Hollywood, CA 90028.

On November 21, 1995 I served the foregoing document described as CHURCH OF SCIENTOLOGY INTERNATIONAL'S MEMORANDUM OF POINTS AND AUTHORITIES IN OPPOSITION TO ARMSTRONG'S "AMENDED" MOTION FOR RECONSIDERATION OF ENTRY OF PERMANENT INJUNCTION; REQUEST FOR SANCTIONS AGAINST ARMSTRONG AND HIS ATTORNEY, FORD GREENE on interested parties in this action,

[ ] by placing the true copies thereof in sealed envelopes as stated on the attached mailing list;

[X] by placing [ ] the original [X] true copies thereof in sealed envelopes addressed as follows:

MICHAEL WALTON
700 Larkspur Landing Circle
Suite 120
Larkspur, CA 94939

[ ] *I deposited such envelope in the mail at Los Angeles, California. The envelope was mailed with postage thereon fully prepaid.

[X] As follows: I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with U.S. postal service on that same day with postage thereon fully prepaid at Los Angeles, California in the ordinary course of business. I am aware that on motion of party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing an affidavit.

Executed on November 21, 1995 at Los Angeles, California.

[ ] **(BY PERSONAL SERVICE) I delivered such -- envelopes by hand to the offices of the addressees.

Executed on ________________, at _____________, California.

[X] (State) I declare under penalty of the laws of the State of California that the above is true and correct.

[ ] (Federal) I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

Matt Ward
Print or Type Name

Matt Ward
Signature

* (By Mail, signature must be of person depositing envelope in mail slot, box or bag)

** (For personal service signature must be that of messenger)

PROOF OF SERVICE

I declare that I am employed in the City and County of San Francisco, California.

I am over the age of eighteen years and not a party to the within entitled action. My business address is 115 Sansome Street, Suite 400, San Francisco, California.

On November 22, 1995, I caused the attached copy of **CHURCH OF SCIENTOLOGY INTERNATIONAL'S MEMORANDUM OF POINTS AND AUTHORITIES IN OPPOSITION TO ARMSTRONG'S "AMENDED" MOTION FOR RECONSIDERATION OF ENTRY OF PERMANENT INJUNCTION; REQUEST FOR SANCTIONS AGAINST ARMSTRONG AND HIS ATTORNEY, FORD GREENE** on the following in said cause, by placing for deposit with Lightning Express Messenger Service on this day in the ordinary course of business, true copies thereof enclosed in a sealed envelope. The envelope was addressed as follows:

Gerald Armstrong
715 Sir Francis Drake Blvd.
San Anselmo, California 94960

I declare under the penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed at San Francisco, California on November 22, 1995.

Colleen Y. Palmer
COLLEEN Y. PALMER

9453

FILED

NOV 27 1995

MARIN COUNTY CLERK
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Telefax: (213) 953-3351

Attorneys for Plaintiff
CHURCH OF SCIENTOLOGY
INTERNATIONAL

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF MARIN

CHURCH OF SCIENTOLOGY INTERNATIONAL, a California not-for-profit religious corporation,

Plaintiff,

vs.

GERALD ARMSTRONG; DOES 1 through 25, inclusive,

Defendants.

CASE NO. BC 157680

PLAINTIFF'S REPLY IN SUPPORT OF MOTION FOR (1) SUMMARY ADJUDICATION OF THE FIRST CAUSE OF ACTION OF ARMSTRONG'S FIRST AMENDED CROSS-COMPLAINT; (2) SEVERANCE; (3) DISMISSAL OF UNADJUDICATED CLAIMS; AND (4) ENTRY OF FINAL JUDGMENT

DATE: December 1, 1995
TIME: 9:00 a.m.
DEPT: 1

TRIAL DATE: Vacated

I. INTRODUCTION

The motion made by plaintiff, Church of Scientology International, asks the Court to enter a series of orders designed to bring the breach of contract aspects of this case to an orderly conclusion. It is solidly based on the prior orders of this Court, the Los Angeles Superior Court, and the Second Circuit Court of Appeal, all issued in this case.

Armstrong has not responded to the bulk of the motion. The Church's requests for severance of the fraudulent conveyance action, dismissal of the remaining breach claims, and an acknowledgment that the Church is the prevailing party, entitled to attorneys' fees and costs, are not opposed, and should be granted.

The only issue which Armstrong has addressed is whether the Church is entitled to summary adjudication in its favor of Armstrong's claim for declaratory relief. His response to that issue is at best inappropriate, and at worst sanctionable. He has:

1. Falsely asserted that this Court "has not ruled on Armstrong's defense based on First Amendmet (sic) religious liberty principles;"

2. Used this false assertion to improperly re-argue the merits of motions which he has already lost;

3. Used this false assertion to re-file evidence which the Court ordered stricken; and

4. Filed papers that are nearly identical in content to his "points and authorities in support of motion for

reconsideration," to which the Church has separately responded.[1]

None of Armstrong's renewed vitriol, however, responds to the undisputed facts presented by the Church's concise moving papers. The records of this case demonstrate that every argument made by Armstrong in this opposition has been made by him before, sometimes three, four or five times, and that in each case he has chosen to simply ignore the court's earlier rulings. However, neither he, nor the Court, is permitted to do this. The jurisdictional nature of C.C.P. Section 1008 mandates that a Court may only reconsider its own earlier order by properly following the dictates of that section.

II. **STATEMENT OF FACTS**

Armstrong begins his opposing papers by asserting that, "[t]he Court has not ruled on Armstrong's defense based on First Amendmet (sic) religious liberty principles," [Oppo., also labelled "Points and Authorities in Support of Motion for Reconsideration," at 1], and using this as the foundation on which he bases the rest of his argument. However, Armstrong is wrong. Not only did this Court just rule on this defense last month, while granting two motions for summary adjudication, but the issue was also decided by Judge Sohigian in 1992, and by the Second District Court of Appeal in 1994.

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[1] Armstrong's opposition to this motion consists entirely of arguments which he made in his motion for reconsideration, with the exception of the introduction, the conclusion and a footnote. In his word-processing frenzy, he has even duplicated the title of the paper incorrectly (p.1). Rather than clutter the Court's files with still more paper, plaintiff declines to re-process its opposition to the reconsideration motion, set for hearing on the same day, and instead incorporates it herein by reference as if set forth in its entirety.

Indeed, Armstrong has argued that the Agreement violates his right to speak freely about religious matters since the very first motion in this case. The Court of Appeal responded quite decisively, holding that,

> Although Armstrong's "freedom of speech" is affected, it is clear that a party may voluntarily by contract agree to limit his freedom of speech. (See In re Steinberg (1983) 148 Cal.App.3d 14, 18-20 [filmmaker agreed to prior restraint on distribution of film]; ITT Telecom Products Corp. v. Dooley (1989) 214 Cal.App.3d 307, 319 [employee's agreement not to disclose confidential information; "it is possible to waive even First Amendment free speech rights by contract"]; Snepp v. United States (1980) 444 U.S. 507, 509, fn. 3 [book by CIA employee subject to prepublication clearance by terms of his employment contract].)

[Ex. J to Request for Judicial Notice, Moving Papers, at 8-9][2]

Just last month, Armstrong made his religious beliefs the cornerstone of his response to two motions for summary adjudication brought by the Church. Arguing that "Armstrong believes that his entire relationship with Scientology over the past 25 years has been divinely inspired, and that God has called upon Armstrong to speak out,"[3] he filed 10 volumes of "evidence," most of it concerning his mistaken interpretation and criticism of Scientology's beliefs. In its Order of Summary Judgment as to the Thirteenth, Sixteenth, Seventeenth and Nineteenth Causes of Action ["the Summary Judgment Order"] filed on October 17, 1995, this Court ruled directly on this defense, granting summary adjudication and holding,

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[2] Unless otherwise noted, all references are to exhibits to the Request for Judicial Notice which was filed with the moving papers.

[3] This argument consumes two pages of Armstrong's brief in Opposition to Motion for Summary Adjudication on (sic) the Twentieth Cause of Action, (pp. 19-20) and is incorporated by reference into his Opposition to Motion for Summary Adjudication on the Thirteenth, Sixteenth, Seventeenth and Nineteenth Causes of Action (p.1). The Separate Statements devote 90 paragraphs to speech/religious allegations, and refer to more than 69 exhibits that purport to relate to these issues. Armstrong has repeated all of these allegations in his separate statement herein (verbatim), and refers to all of the same evidence.

> FIRST AMENDMENT: First Amendment rights may be waived by contract. (See *ITT Telecom Products Corp. v. Dooley* (1989) 214 Cal.App.3d 307, 319.)

[Ex. D at 4]

This Order was signed on October 17, 1995, and served on Armstrong the next day. Although Armstrong has filed a motion for reconsideration concerning the Order of Permanent Injunction, to which the Church has separately responded, he has not moved for reconsideration of this Order.

III. ARGUMENT

A. Armstrong May Not Use His Opposition To Re-Argue Matters That Have Already Been Decided

Code of Civil Procedure Section 1008(a) provides in pertinent part,

> When an application for an order has been made to a judge, or to a court, and . . . granted . . . any party affected by the order may, within 10 days after service upon the party of written notice of entry of the order and based upon new or different facts, circumstances, or law, make application to the same judge or court that made the order, to reconsider the matter and modify, amend, or revoke the prior order. The party making the application shall state by affidavit what application was made before, when and to what judge, what order or decisions were made, and what new or different facts, circumstances, or law are claimed to be shown.

This section "is the exclusive means for modifying, amending or revoking an order. That limitation is expressly jurisdictional.'" Gilberd v. AC Transit (1995) 32 Cal.App.4th 1494, 1499 38 Cal.Rptr.2d 626, quoting, Morite of California v.

has not been ruled on, and is dispositive of plaintiff's motion. He is wrong on both counts. As demonstrated in Part II, supra, the defense has, indeed, been ruled upon, and against Armstrong. Moreover, his defense is factually irrelevant to a motion for summary adjudication of a cross-claim.

Assuming, arguendo, some relevance to Armstrong's lengthy religious argument, Armstrong may not raise it again here, in the context of an opposition to plaintiff's motion. Morite demonstrates that a new motion does not open the door for a party to obtain reconsideration of a prior order. That requires a motion for reconsideration, made within ten days, along with an affidavit describing the order and the new facts or law which justifies the motion. Armstrong did not move for reconsideration of the Summary Judgment Order and, with no new facts or law presented within 10 days, may not. Assuming arguendo that Armstrong's First Amendment defense has relevance to a motion for summary adjudication of his cross-claim, it has already been decided against him.

B. Armstrong Should Not Be Permitted To Refile Exhibits Which Were Previously Stricken

Armstrong has refiled documents in support of his opposition which this court has already stricken. In granting CSI's previous motion to strike, this Court held,

> The plaintiff has asked that the exhibits which were previously ordered sealed be stricken as they are trade secrets, irrelevant to this motion. This request is GRANTED. They are not relevant. Further, they were filed by Mr. Armstrong *in pro per* when he is, in fact, represented by counsel.

[Court, Ruling of October 6, 1995, p. 2.] The Court thus held that the documents in question were trade secrets, and not

Superior Court (1993) 19 Cal.App.4th 485, 590, 23 Cal.Rptr.2d 666 (emphasis supplied). Moreover, "[a]ccording to the plain language of the statute, a court acts in excess of jurisdiction when it grants a motion to reconsider that is not based upon 'new or different facts, circumstances, or law.'" Gilberd. at 1500.

A party is not permitted to obtain reconsideration of a Court's prior order by attacking it collaterally, rather than bringing a 1008 motion. In Morite of California, supra, the superior court granted petitioner's motion to stay a declaratory relief proceeding until after the trial in a related case. Two years later, before the related case had been tried, the case was assigned to another superior court judge. On a status conference questionnaire, the respondent requested that the court set the matter for trial -- in effect, vacating the earlier order. The court did so, over petitioner's objection that the jurisdictional limitations of C.C.P. §1008 prohibited the Court from changing the stay order.

The Court of Appeal issued a writ of mandate commanding the superior court to vacate the order setting the case for trial. In so holding, the Court said,

> [I]f courts may simply ignore interim orders instead of modifying, amending or revoking them after due consideration, then the procedural, substantive and jurisdictional requirements of section 1008 are meaningless. By making section 1008 expressly jurisdictional, the Legislature clearly intended to prevent courts from modifying, amending or revoking prior orders without due reconsideration. Ignoring (i.e., implicitly revoking) interim orders, such as the prior stay order, undermines the Legislative intent behind section 1008, subdivision (e).

19 Cal.App.4th at 492-493.

Here, Armstrong argues that his "First Amendment Defense" relevant to the matters at issue. They are still trade secrets, and they are still not relevant to anything at issue in this case.[4] This is underscored by the fact that Armstrong has filed no new evidence in opposition to this motion, but simply re-word-processed his opposition to earlier summary adjudication motions. The documents in question should be stricken, and Armstrong and his counsel sanctioned for filing them with the Court yet again.

C. The Church Is Entitled To Summary Adjudication

As demonstrated in the moving papers, no triable issue of fact remains as to Armstrong's cross-claim for declaratory relief. His questions have all been answered by this Court's rulings in the main action. When the issues presented by a cross-claim for declaratory relief are fully resolved against the cross-complainant by resolution of claims contained in the complaint, it is proper for the court to enter a judgment against the cross-complainant on the cross-claim. International Association of Firefighters, Local No. 1319, AFL-CIO v. City of Palo Alto (1963) 60 Cal.2d 295, 32 Cal.Rptr. 842, 845-846. Summary judgment is an appropriate procedure to use to resolve a declaratory relief action. Allis-Chalmers Corp. v. City of Oxnard (1981) 126 Cal.App.3d 814, 818 n.3, 179 Cal.Rptr. 159, 161 n.3.

Here, the only relief which Armstrong seeks is

> [A] judicial determination of his rights and

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[4] At the time that the earlier summary adjudication motions were ruled on, plaintiff filed CSI's objections to Armstrong's Evidence in Support of Opposition to Plaintiffs' Pending Motions for Summary Adjudication; Motion to Strike Evidence; and Request for Sanctions Against Gerald Armstrong and Ford Greene. Since Armstrong has chosen to rely on precisely the same evidence that he filed before, plaintiff renews those objections and that motion without refiling duplicate papers.

> duties, and a declaration that the only provisions of the settlement agreement which are valid are those which directly pertain to the dismissal of his cross-complaint in Armstrong I in consideration for the payment of a sum of money, and that paragraphs 4A, 4B, 7D, 7G, 7H, 7I, 10, 18D, 18E of the settlement agreement should be severed and held not to be legally enforceable because they were designed to suppress evidence and obstruct justice.

[Ex. G to Request for Judicial Notice, Verified Amended Cross-Complaint, p.29, ¶ 61]

As demonstrated above and in the moving papers, this Court has already judicially determined all of these issues against Armstrong. Under these circumstances, the Church is entitled to summary judgment of Armstrong's cross-claim for declaratory relief, declaring that Armstrong is not entitled to any of the relief which he requested.

D. The Remainder Of Plaintiff's Motion Should Also Be Granted

In an effort to resolve this case as rapidly as possible, plaintiff has also asked the Court to take a series of steps which will effectively end litigation in the breach of contract case. Armstrong has not opposed these. Accordingly, and for all of the reasons set forth in the moving papers, the Church requests that the Court:

1. Enter an order of summary adjudication in favor of plaintiff/cross-defendant and against defendant/cross-complainant on the First Cause of Action for Declaratory Relief contained in Armstrong's First Amended Cross-Complaint from the original breach of contract case. This cross-claim is the only remaining claim of Armstrong's, and it seeks declaratory relief as to provisions of the contract which this Court has already enforced against Armstrong;

2. Enter an order severing the fraudulent conveyance action from the breach case. The adjudication of this action as to Armstrong is stayed pending the bankruptcy, and the action at present belongs to the trustee in bankruptcy, who has not relinquished it; and

3. Enter an order dismissing those of plaintiff's claims not already adjudicated by summary adjudication.

Once these matters have been resolved, all of the issues remaining in this case will have been finally adjudicated in plaintiff's favor. The Church requests that the Court enter final judgment for the Church in the form of the Orders granting summary adjudication, including permanent injunction and $300,000 in damages, together with costs and fees as prayed in the Second Amended Complaint. The Church also requests that the Court adjudicate that it is the prevailing party on the contract, pursuant to Civil Code Section 1717, and thus entitled to recover its attorneys' fees and costs.

IV. CONCLUSION

Armstrong has presented no relevant arguments or evidence in opposition to plaintiff's motion for summary adjudication. Instead, he argues that the Court has not already ruled, when it has, and improperly seeks reconsideration of that ruling. This attempt to covertly obtain reconsideration should be rejected. Further, Armstrong has not opposed the remainder of the Church's motion. It should, accordingly be granted.

Therefore, the plaintiff, Church of Scientology International, requests that this Court enter final judgment in its favor, by (1) granting the motion for summary adjudication of Armstrong's last remaining cross-claim; (2) severing the fraudulent conveyance action from the breach case; (3) dismissing those of plaintiff's claims which have not yet been adjudicated; and (4) entering final judgment against Armstrong pursuant to plaintiff's motions for summary adjudication already granted, in the amount of $300,000 and a permanent injunction, together with attorneys' fees and costs.

Dated: November 22, 1995 Respectfully submitted,

Andrew H. Wilson
WILSON, RYAN AND CAMPILONGO

MOXON & BARTILSON

By: Laurie J. Bartilson
Laurie J. Bartilson

Attorneys for Plaintiff
CHURCH OF SCIENTOLOGY
INTERNATIONAL

PROOF OF SERVICE

STATE OF CALIFORNIA)
) ss.
COUNTY OF LOS ANGELES)

I am employed in the County of California, State of California. I am over the age of eighteen (18) years and not a party to the within action. My business address is 6255 Sunset Boulevar, Suite 2000, Hollywood, CA 90028.

On November 22, 1995 I served the foregoing document described as PLAINTIFF'S REPLY IN SUPPORT OF MOTION FOR (1) SUMMARY ADJUDICATION OF THE FIRST CAUSE OF ACTION OF ARMSTRONG'S FIRST AMENDED CROSS-COMPLAINT; (2) SEVERANCE; (3) DISMISSAL OF UNADJUDICATED CLAIMS; AND (4) ENTRY OF FINAL JUDGMENT on interested parties in this action,

[ ] by placing the true copies thereof in sealed envelopes as stated on the attached mailing list;

[X] by placing [ ] the original [X] true copies thereof in sealed envelopes addressed as follows:

Ford Greene
HUB Law Offices
711 Sir Francis Drake Blvd.
San Anselmo, CA 94960-1949

MICHAEL WALTON
700 Larkspur Landing Circle
Suite 120
Larkspur, CA 94939

[ ] *I deposited such envelope in the mail at Los Angeles, California. The envelope was mailed with postage thereon fully prepaid.

[X] As follows: I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with U.S. postal service on that same day with postage thereon fully prepaid at Los Angeles, California in the ordinary course of business. I am aware that on motion of party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing an affidavit.

Executed on November 22, 1995 at Los Angeles, California.

[ ] **(BY PERSONAL SERVICE) I delivered such -- envelopes by hand to the offices of the addressees.

Executed on ________________, at _____________, California.

[X] (State) I declare under penalty of the laws of the State of California that the above is true and correct.

[ ] (Federal) I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

Abel L. Timura

Print or Type Name

Signature

* (By Mail, signature must be of person depositing envelope in mail slot, box or bag)

** (For personal service signature must be that of messenger)

ORIGINAL

9466

FILED

NOV 29 1995

HOWARD HANSON
MARIN COUNTY CLERK
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Ford Greene, Bar No. 107601
Attorney for Defendant

SUPERIOR COURT OF THE STATE OF CALIFORNIA, COUNTY OF MARIN

CHURCH OF SCIENTOLOGY INTERNATINOAL

Plaintiff,

vs.

GERALD ARMSTRONG

Defendant

Case No. 157 680

ARMSTRONG'S
REQUEST FOR JUDICIAL NOTICE IN SUPPORT OF REPLY IN SUPPORT OF MOTION FOR RECONSIDERATION

Date: December1 1995
Time: 9:00 A.M.
Dept: One (1)

Pursuant to Evidence Code sections 452 and 453, defendant Gerald Armstrong requests that the Court take judicial notice of the following documents:

A: Declaration of Kenneth Long in Support of Plaintiff's Reply In Support of Motion for Summary Adjudication of the Fourth, Sixth, and Eleventh Causes of Action of Plaintiff's Second Amended Complaint.

B. Memorandum Opinion filed November 28, 1995 in *Religious Technology Center v. Lerma, The Washington Post, et al*. United States District Court, Eastern District of Virginia, Case No. 95-1107-A.

C. Plaintiff Church of Scientology International's Notice of Motion and Motion to Strike Defendant Gerald Armstrong's Amended Answer filed in U.S. Bankruptcy Court, Northern District of California, Case No. 95-10911 aj.

DATED: November 29, 1995 HUB LAW OFFICES

RUSH

By:____

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RECEIVED
JAN 23 1995
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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF MARIN

CHURCH OF SCIENTOLOGY INTERNATIONAL, a California not-for-profit religious corporation,	CASE NO. 157 680
	[CONSOLIDATED]
Plaintiff,	DECLARATION OF KENNETH D. LONG IN SUPPORT OF PLAINTIFF'S REPLY IN SUPPORT OF MOTION FOR SUMMARY ADJUDICATION OF THE FOURTH, SIXTH AND ELEVENTH CAUSES OF ACTION OF PLAINTIFF'S SECOND AMENDED COMPLAINT
vs.	
GERALD ARMSTRONG; DOES 1 through 25, inclusive,	DATE: January 27, 1995 TIME: 9:00 a.m. DEPT: 1
Defendants.	TRIAL DATE: May 18, 1995

I, KENNETH D. LONG, hereby state:

1. I am a staff member in the Legal Bureau of the Church of Scientology International, in which I perform the functions of a paralegal. From 1980 through June, 1992, I was a staff member of the Church of Scientology of California and worked as a paralegal in the Legal Bureau of that Church.

2. Since August 1982, I have worked in a paralegal capacity on legal matters relating to Gerald Armstrong. Through the course of this work, I have studied the documents pertaining to legal matters involving Gerald Armstrong, have assisted counsel in the taking of depositions of Gerald Armstrong, and have worked on cases and trials either directly involving Gerald Armstrong or in which Armstrong testified. I am familiar with the proceedings in the case of Church of Scientology vs. Gerald Armstrong, L.A.S.C. Case No. C420153. I am also familiar with the press and media attention which Armstrong obtained prior to the settlement. Further, I am familiar with the releases signed by Vicki and Richard Aznaran. It is based on the above knowledge and experience that I make this declaration and if called upon to do so, I could and would competently testify thereto.

3. At the time that the Aznarans signed release agreements, they were employees of a Church-related entity, and had decided to leave that employment. They had not publicly attacked any Church of Scientology, had not testified on behalf of any anti-Church litigant, and were not themselves anti-Church litigants at the time that they signed the releases.

4. At the time the Church settled with Armstrong, Armstrong was both an anti-Church litigant and a professional witness against the Church in other litigation. He was also a paralegal who worked extensively on anti-Church cases, and a self-designated public relations man who gave interviews to many reporters for sensationalist journals.

5. Prior to December 1986, Armstrong had testified in 15 cases, including his own, for a total of 28 trial days, attacking the Church of Scientology and related entities and individuals.

6. Prior to December, 1986, Armstrong had been deposed for 19 days, and had executed 28 declarations in 15 cases, attacking the Church of Scientology and related entities and individuals.

7. Before December, 1986 Armstrong appeared on more than 10 television and radio programs, attacking the Church of Scientology and related entities and individuals. In October, 1986, Armstrong was interviewed at length on the television program 2020.

8. Before December, 1986, more than 76 stories about Armstrong appeared in United States newspapers. In these articles, too, Armstrong attacked the Church and related entities and individuals.

I declare under the penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed this 19th day of January, 1995, at Los Angeles, California.

Kenneth D. Long

KENNETH D. LONG

9471

IN THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF VIRGINIA
Alexandria Division

NOV 28

RELIGIOUS TECHNOLOGY CENTER)
)
Plaintiff,)
)
v.) Civil Action No.95-1107-A
)
ARNALDO PAGLIARINA LERMA,)
DIGITAL GATEWAY SYSTEMS,)
THE WASHINGTON POST,)
MARC FISHER, and)
RICHARD LEIBY,)
)
Defendants.)

MEMORANDUM OPINION

Before the Court is the Motion for Summary Judgment filed by defendants, The Washington Post, and two of its reporters, Marc Fisher and Richard Leiby (hereinafter referred to collectively as "The Post"). A court may grant summary judgment "only when there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law." Miller v. Leathers, 913 F.2d 1085, 87 (4th Cir. 1990) (citing Fed. R. Civ. P. 56(c)). In ruling on such motions, the court must construe the facts and all inferences drawn from those facts in favor of the non-moving party. Charbonnages de France v. Smith, 597 F.2d 406, 414 (4th Cir. 1979). Having performed this analysis, the Court finds that summary judgment should be entered in favor of the defendants.

1. UNDISPUTED FACTS

The essential facts are not in dispute. In 1991, the Church of Scientology sued Steven Fishman, a disgruntled former member of the Church of Scientology, in the United States District Court for the Central District of California. Church of

Scientology Int'l v. Fishman, No. CV 91-6426. On April 14, 1993, Fishman filed in the open court file what has come to be known as the Fishman affidavit, to which were attached 69 pages of what the Religious Technology Center ("RTC") describes as various Advanced Technology works, specifically levels OT-I through OT-VII documents. Plaintiff claims that these documents are protected from both unauthorized use and unauthorized disclosure under the copyright laws of the United States and under trade secret laws, respectively.

In California, the RTC moved to seal the Fishman affidavit, arguing that the attached AT documents were trade secrets. That motion was denied and the Ninth Circuit upheld the district court's decision not to seal the file. *Church of Scientology Int'l v. Fishman*, 35 F.3d 570 (9th Cir. 1994). The case was remanded for further proceedings and the district court again declined to seal the file, which remained unsealed until August 15, 1995.

Defendant Arnaldo Lerma, another former Scientologist, obtained a copy of the Fishman affidavit and the attached AT documents. Lerma admits that on July 31 and August 1, 1995, he published the AT documents on the Internet through defendant Digital Gateway Systems ("DGS"), an Internet access provider. RTC, which regularly scans the Internet, discovered the publication of documents and on August 11, 1995, warned Lerma to return the AT documents and not publish them any further. After Lerma refused to cooperate, RTC obtained a Temporary Restraining Order prohibiting Lerma from any further publication of the documents and a seizure warrant which authorized the United States Marshal to seize Lerma's personal computer, floppy disks and any copies of the copyrighted works of L. Ron Hubbard, the author of the AT documents

During the same time period, on or abut August 5 or 6, 1995, Lerma sent a hard copy of the Fishman affidavit and AT attachments to Richard Leiby, an investigative reporter for The Washington Post. On August 12, 1995, counsel for RTC discovered this disclosure and approached The Post, which was told that the Fishman affidavit might be stolen. In response to the RTC's representations, The Post returned the actual copy which Lerma had given it. However, The Post had by then learned that a copy of the same Fishman affidavit was available in the open court file in the United States District Court for the Central District of California. On August 14, 1995, The Post sent Kathryn Wexler, a news aide stationed in California, to that court to obtain a copy of the Fishman affidavit. The Clerk's office made a copy for Wexler, who then mailed it to Washington. Although it is undisputed that RTC staff members had been checking that file out and holding it all day to prevent anyone from seeing it, the file was not sealed and obviously was available, upon request, to any member of the public who wished to see it.

The day after The Post obtained its copy of the Fishman affidavit, the RTC applied for a sealing order and the trial judge ordered the file sealed. However, there is no evidence in the record that the judge ordered The Post to return the copy made by the Clerk's office or that any kind of a restraining order was issued by that court against The Post.

Five days later, on August 19, 1995, The Post published a news article, entitled "Church in Cyberspace: Its Sacred Writ is on the Net. Its Lawyers are on the Case," written by defendant Marc Fisher. In that article, RTC's lawsuit against Lerma and the seizure of his computer equipment were discussed, as was the history of Scientology litigation against its critics and the growing use of the Internet by Scientology dissidents. The article included three brief quotes (totalling 46 words) from three of the AT documents. On August 22, 1995, the RTC filed its First Amended Verified Complaint for Injunctive Relief and Damages in which it added The Washington Post and its two reporters, Fisher and Leiby, as additional defendants. A Second Amended Verified was later filed and is now the subject of this summary judgment motion.

II. THE COPYRIGHT CLAIM

Although the Court has serious reservations about whether the AT documents at issue in this litigation are properly copyrighted, for the purposes of this motion, the Court assumes that the RTC holds properly registered, valid copyrights for the AT documents attached to the Fishman affidavit.

The Post does not deny that it copied the AT documents and quoted from them. It argues, however, that this copying and these quotations fall squarely within the "fair use" exception. Thus, the dispositive issue as to the copyright claim is whether or not The Post's use of the AT documents falls within the fair use exception to the copyright law. Under that exception, "the fair use of a copyright ... for purposes such as criticism, comment, news reporting ... or research, is not an infringement of copyright." 17 U.S.C.A. § 107 (West Supp. 1995) (emphasis added). As the Supreme Court has held "fair use is a mixed question of law and fact." Harper & Row Publishers Inc. v. Nation Enters., 471 U.S. 539, 560 (1985). In the instant case, the Court finds no material facts in dispute; therefore, the issue can be resolved as a matter of law.

At the outset of its opposition, the RTC argues that because the fair use doctrine is an equitable one, The Post should not be allowed to rely on this defense because of unclean hands. Specifically, the RTC points to The Post's failure to disclose that it had made several copies of the Fishman affidavit. In an affidavit signed on September 26, 1995, Mary Ann Werner, a Post Vice President and counsel, averred that "only one copy of that [Fishman] declaration has been made." In fact, through discovery RTC has learned, and The Post does not dispute, that other copies were made. Wexler admits that she made an additional copy of the materials received from the Clerk's office. She sent that copy to Washington as well to ensure that Washington got a copy. A second copy was created, not by copying the Fishman affidavit which had been obtained in California, but by down loading a copy off the Internet. The Post argues persuasively here that the presence of the AT documents on the Internet was part of their very news worthiness and that making this copy was an act of legitimate news gathering.

A third copy of the AT documents was generated after Lerma sent a duplicate of the Fishman affidavit to Leiby via e-mail. That e-mail was copied to a disk in response to a demand by RTC's counsel on August 12, 1995, that The Post secure any materials it had been sent by Lerma. (Second Werner Decl. §§ 4-5).

None of these acts of copying strike this Court as constituting unethical behavior and the Court is satisfied from her second declaration that Ms. Werner did not mislead the Court or counsel in referring to one copy. In any case, the Court agrees with The Post that the issue of unclean hands is a weak attempt by RTC to avoid the real issue of fair use.

In determining whether the use of a copyrighted work is fair use and therefore not an infringement, the Court must consider four factors:

> 1. the purpose and character of the use, including whether such use is of a commercial nature or is for nonprofit educational purposes;
>
> 2. the nature of the copyrighted work;
>
> 3. the amount and substantiality of the portion used in relation to the copyrighted work as a whole;
>
> 4. the effect of the use upon the potential market for or value of the copyrighted work.
>
> The fact that a work is unpublished shall not itself bar a finding of fair use if such finding is made upon consideration of all the above factors.

17 U.S.C.A. § 107 (West Supp. 1995). These four statutory factors may not "be treated in isolation, one from another. All are to be explored, and the results weighed together, in light of the

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purposes of copyright." Campbell v. Acuff-Rose Music Inc., 114 S. Ct. 1164, 1170-71 (1994). The interplay of the four factors is recognized elsewhere as well. See, e.g., Sony Corp. of America v. Universal Studios, Inc., 464 U.S. 417, 449-450 (1984) (reproduction of entire work "does not have its ordinary effect of militating against a finding of fair use" as to home videotaping of television programs); Harper & Row, Publishers, Inc. v. National Enterprises, 471 U.S. 539, 564 (1985) ("[E]ven substantial quotations might qualify as fair use in a review of a published work or a news account of a speech" but not in a scoop of a soon-to-be-published memoir). Thus, we may not evaluate any single fair use factor in isolation.

As to the first factor, the purpose and character of the use, there is no evidence in this record that The Post copied the AT documents for any purposes other than news gathering, news reporting and responding to litigation. Although the RTC has argued that The Post harbors some animus towards Scientology, an unbiased observer would conclude that the Church of Scientology and its treatment of critics is a newsworthy subject about which The Post is permitted to investigate and report. There is no evidence that The Post was trying to "scoop" the RTC in quoting the AT documents or trying to avoid payment of a royalty, conduct to which other courts have looked in finding that a media organization violated copyright. Harper & Row Publishers, Inc., v. Nation Enterprises, 471 U.S. 539 (1985); Iowa State University Foundation, Inc., v. American Broadcasting Co., Inc., 463 F. Supp. 902

(S.D.N.Y. 1978).

Under the second factor, the scope of the fair use doctrine is greater with respect to factual works than creative or literary works. Hubbard's works are difficult to classify and courts dealing with this issue have differed in their conclusion. As the Second Circuit stated in New Era Publications Int'l v. Carol Publishing Group, 904 F.2d 152, 158 (2d Cir.), cert. denied, 111 S. Ct. 297 (1990), "reasonable people can disagree over how to classify Hubbard's works." However, that court also concluded that the works "deal with Hubbard's life, his views on religion, human relations, the Church, etc. -- [and] are more properly viewed as factual or informational." Id. at 157. The United States District Court for the Southern District of California is of another view, however. In Bridge Publications, Inc. v. Vien, 827 F. Supp. 629, 636 (S.D. Cal. 1993), the court stated that "[t]he undisputed evidence shows that L. Ron Hubbard's works are the product of his creative thought process, and not merely informational."

However, in this litigation the RTC has characterized the AT documents essentially as training materials. Therefore, this Court concludes that despite their obtuse language the AT documents are intended to be informational rather than creative and, therefore, that a broader fair use approach is appropriate.

To evaluate the third factor, which essentially requires making a qualitative as well as quantitative analysis of the use made of the work, the three quotes need to be read in the context of the article. The first and longest quote is obviously included

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merely as an example of the obtuse language used in the AT documents. No fair-minded reader could possibly construe this quote otherwise.

> Most of the 103 pages of disputed texts from the Fishman file are instructions for leaders of the OT training sessions. They are written in the dense jargon of the church. 'If you do OT IV and he's still in his head, all is not lost, you have other actions you can take. Clusters, Prep-Checks, failed to exercise directions.'

The second quote describes how in "one high-level OT session trainees are asked to pick an object 'wrap an energy beam around it' and pull themselves toward the object." The last quote occurs in the very next sentence which describes how trainees are to "be in the following places--the room, the sky, the moon, the sun." These underlined words comprise the total of the copyrighted materials quoted.

The RTC argues that where quotes, although fragmentary, are of "significant material," even de minimis copying infringes. It then bootstraps this argument by claiming that because Fisher chose to include these three quotes in his article, the quoted language must necessarily be significant. Under this reasoning, no one, let alone a newspaper, could ever quote from copyrighted materials without fear of being hauled into court for infringement because any quote would be deemed significant. To accept this argument would essentially destroy the fair use doctrine. It also clearly is unsupported by the facts because as discussed above the three quotes, read in context of the entire article, are offered solely as illustrations of the author's claims about Scientology. They are not intended to offer a complete definition of the Scientology religion or to capture the total essence of what it means to be a Scientologist.

Lastly, we must look at the effect of The Post's use upon the potential market for or value of the copyrighted work. Although the RTC claims it has demonstrated an enormous effect upon its potential market, a fair view of the record discloses no evidence of any economic exploitation by The Post of RTC's copyrighted material. As The Post cogently argues, no follower of Scientology could possibly be satisfied by these three random fragments quoted in its article so as to bypass the complete regime of indoctrination.

Although both sides have raised numerous additional issues, the essential analysis for the copyright claim comes down to these four factors. Based on this analysis, we find for the defendants. RTC properly argues that the mere existence of a copyrighted work in an open court file does not destroy the owner's property interests in that work. In the same way, the placement of a copyrighted book on a public library shelf does not permit unbridled reproduction by a potential infringer. However, RTC cannot selectively avail itself of only a segment of the copyright law. With the preservation of copyright protection invariably comes the fair use exception, and on that ground The Post's actions are proper.

III. ATTORNEY'S FEES

Because The Post has been found to be the prevailing party on the copyright claim, it qualifies for an award of attorney's fees and litigation expenses. The RTC opposes such an award Whether to award such fees is a matter left to the Court's discretion. Fogerty v. Fantasy, Inc., --U.S.--, 114 S. Ct. 1023, 1033 (1994). In deciding the appropriateness of a fee award, the Court should consider the motivation of the plaintiff in bringing the action for copyright infringement and the extent to which plaintiff's position is reasonable and well-grounded in fact and law.

On the first issue, the Court finds that the motivation of plaintiff in filing this lawsuit against The Post is reprehensible. Although the RTC brought the complaint under traditional secular concepts of copyright and trade secret law, it has become clear that a much broader motivation prevailed--the stifling of criticism and dissent of the religious practices of Scientology and the destruction of its opponents. L. Ron Hubbard, the founder of Scientology, has been quoted as looking upon the law as a tool to

> [h]arass and discourage rather than to win. The law can be used very easily to harass and enough harassment on somebody who is simply on the thin edge anyway, well knowing that he is not authorized, will generally be sufficient to cause his professional decease. If possible, of course, ruin him utterly.

(Declaration of Mary Ann Werner, Attachment A, at C5; see also The Post's reply brief at p. 24, note 23).

The context and extent in which The Post copied and quoted from the AT documents was so de minimis that this Court finds that no reasonable copyright holder could have in good faith brought a copyright infringement action. Although there are limits beyond

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which the media may not go, even in the interests of news gathering and reporting, this case does not come anywhere near those limits. Therefore, an award of reasonable attorneys' fees is appropriate and granted.

IV. MISAPPROPRIATION CLAIM

To prove misappropriation of a trade secret, the RTC must show (1) that it possessed a valid trade secret, (2) that the defendant acquired its trade secret, and (3) that the defendant knew or should have known that the trade secret was acquired by improper means. Trandes Corporation v. Guy F. Atkinson, 996 F.2d 655, 660 (4th Cir. 1993), cert. denied, -- U.S. --, 114 S.Ct. 443 (1993).

The Post argues persuasively that the AT documents were no longer trade secrets by the time The Post acquired them. They point to the following undisputed facts. First, the Fishman affidavit had been in a public court file from April 14, 1993 until August 15, 1995, for a total of 28 months. Although RTC has shown that it went to extraordinary efforts to control access to that file by having church members sign out the file and keep it in their custody at the courthouse, the file nevertheless was an open file, available to the public. The Post was able to obtain a copy of the Fishman affidavit without any difficulty, by merely asking the Clerk of the court to copy it. Thus, having been in the public domain for an extensive period of time, these AT documents cannot be deemed "trade secrets." Kewanee Oil Co. v. Bicron Corp., 416 U.S. 470, 484 (1974).

Of even more significance is the undisputed fact that these

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documents were posted on the Internet on July 31 and August 1, 1995. (Lerma Affidavit). On August 11, 1995, this Court entered a Temporary Restraining Order among other orders which directed Lerma to stop disseminating the AT documents. However, that was more than ten days after the documents were posted on the Internet, where they remained potentially available to the millions of Internet users around the world.

As other courts who have dealt with similar issues have observed, "posting works to the Internet makes them 'generally known'" at least to the relevant people interested in the news group. Religious Technology Center v. Netcom On-Line Communications Services, Inc., No. C. 95-20091 RMW (N.D. Cal.) Slip Opinion entered 9/22/95 at 30. Once a trade secret is posted on the Internet, it is effectively part of the public domain, impossible to retrieve. Although the person who originally posted a trade secret on the Internet may be liable for trade secret misappropriation, the party who merely down loads Internet information cannot be liable for misappropriation because there is no misconduct involved in interacting with the Internet.

Even if one were to assume that the AT documents are still trade secrets, under Virginia law, the tort of misappropriation of trade secrets is not committed by a person who uses or publishes a trade secret unless that person has used unlawful means, or breached some duty created by contract or implied by law resulting from some employment or similar relationship. Smith v. Snap-On Toos Corp., 833 F.2d 578, 581 (5th Cir. 1988); Aerospace Am., Inc.

v. Abatement Tech., Inc., 738 F. Supp. 1061, 1071 (E.D. Mich. 1990).

> It is the *employment of improper means to procure the trade secret, rather than the mere copying or use*, which is the basis of [liability] . . . Apart from breach of contract, abuse of confidence or impropriety in the means of procurement, trade secrets may be copied freely as devices or processes which are not secret.

Trandes Corporation v. Guy F. Atkinson Company, 996 F.2d at 660, (quoting the Restatement (First of Torts)) (emphasis in original). The *Trandes* court notes that abuse of confidence or impropriety in the means of procurement represented the "essential element" and the "core" of a misappropriation claim. *Id*.

The RTC claims that because The Post was on notice of the RTC's allegations that the AT documents were stolen and were both trade secrets and unpublished copyrighted works, The Post was under a legal obligation not to copy or use the documents. This Court knows of no law which required The Post to sit on its hands and do no further investigation into what was obviously becoming a newsworthy event and newsworthy documents. The RTC's allegations are still just allegations. The very court from which the Fishman affidavit was obtained still has under advisement the issue of whether the AT documents are trade secrets. Although The Post was on notice that the RTC made certain proprietary claims about these documents, there was nothing illegal or unethical about The Post going to the Clerk's office for a copy of the documents or downloading them from the Internet.

Because there is no evidence that The Post abused any confidence, committed an impropriety, violated any court order or committed any other improper act in gathering information from the court file or down loading information from the Internet, there is no possible liability for The Post in its acquisition of the information. This is true regardless of the documents status as trade secrets. As for the disclosure of the information. The Post did nothing more than briefly quote from publicly available materials. These acts simply do not approach a trade secret misappropriation, and, therefore, summary judgment must be entered for the defendants.

The Clerk is directed to forward copies of this Memorandum Opinion to counsel of record.

Entered this 28th day of November, 1995.

Leonie M. Brinkema
Leonie M. Brinkema
United States District Judge

Alexandria, Virginia

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Attorneys for Creditor
CHURCH OF SCIENTOLOGY INTERNATIONAL

UNITED STATES BANKRUPTCY COURT

NORTHERN DISTRICT OF CALIFORNIA

In re GERALD ARMSTRONG, Debtor	CASE NO. 95-10911 aj Chapter 7 Adv. No. 95-1164
CHURCH OF SCIENTOLOGY INTERNATIONAL, a California non-profit religious corporation, Plaintiff, v. GERALD ARMSTRONG, Defendant.	PLAINTIFF CHURCH OF SCIENTOLOGY INTERNATIONAL'S NOTICE OF MOTION AND MOTION TO STRIKE DEFENDANT GERALD ARMSTRONG'S AMENDED ANSWER [B.R. 7008; F.R.C.P. 8(b),(c),(e); B.R. 7012(b); F.R.C.P. 12(f)] DATE: October 6, 1995 TIME: 11:00 a.m. CTRM: Alan Jaroslavsky

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that on October 6, 1995 at 11:00 a.m., creditor Church of Scientology International ("the Church") will and hereby does move, the above-entitled Court, located at 99 South "E" Street, Santa Rosa, California, 95404-6524, for an order striking the amended answer filed by debtor Gerald Armstrong.

As grounds for this motion, the Church states that Armstrong's amended answer violates Bankruptcy Rules 7008 and 7012, and Federal Rules of Civil Procedure 8(e) and 12(f), in that the amended answer consists of allegations which are immaterial, impertinent and scandalous, but fails to set forth a short and plain statement of any defense.

This application is based this notice of motion, the accompanying Memorandum of Points and Authorities, and any argument which may properly come before this court.

Dated: September 5, 1995

Respectfully submitted
WILSON, RYAN & CAMPILONGO

By: ______________________
Andrew H. Wilson

Laurie J. Bartilson
BOWLES & MOXON

Attorneys for Plaintiff
CHURCH OF SCIENTOLOGY
INTERNATIONAL

PROOF OF SERVICE

I declare that I am employed in the City and County of San Francisco, California.

I am over the age of eighteen years and not a party to the within entitled action. My business address is 115 Sansome Street, Suite 400, San Francisco, California.

I am readily familiar with Wilson, Ryan & Campilongo's practice for collection and processing of correspondence for mailing with the United States Postal Service.

On September 6, 1995, I served the attached **PLAINTIFF CHURCH OF SCIENTOLOGY INTERNATIONAL'S NOTICE OF MOTION AND MOTION TO STRIKE DEFENDANT GERALD ARMSTRONG'S AMENDED ANSWER** and **CREDITOR AND PLAINTIFF CHURCH OF SCIENTOLOGY INTERNATIONAL'S MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF MOTION TO STRIKE DEFENDANT GERALD ARMSTRONG'S AMENDED ANSWER** on the following in said cause, by placing for deposit with the United States Postal Service on this day in the ordinary course of business, true copies thereof enclosed in sealed envelopes. The envelopes were addressed as follows:

Office of the United States Trustee
250 Montgomery St., Ste. 1000
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2700 Russ Building
235 Montgomery St.
San Francisco, CA 94104-3160

Jeffrey G. Locke, Trustee
P.O. Box 488
Kentfield, CA 94914-0488

I declare under the penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed at San Francisco, California on September 6, 1995.

Colleen Palmer
COLLEEN Y. PALMER

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UNITED STATES BANKRUPTCY COURT

NORTHERN DISTRICT OF CALIFORNIA

In re GERALD ARMSTRONG, Debtor	CASE NO. 95-10911 aj Chapter 7 Adv. No. 95-1164
CHURCH OF SCIENTOLOGY INTERNATIONAL, a California non-profit religious corporation, Plaintiff, v. GERALD ARMSTRONG, Defendant.	CREDITOR AND PLAINTIFF CHURCH OF SCIENTOLOGY INTERNATIONAL'S MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF MOTION TO STRIKE DEFENDANT GERALD ARMSTRONG'S AMENDED ANSWER [B.R. 7008; F.R.C.P. 8(b),(c),(e); B.R. 7012(b); F.R.C.P. 12(f)]

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I. INTRODUCTION

Plaintiff Church of Scientology International ("the Church") filed a complaint to determine dischargeability and in objection to the discharge of defendant debtor Gerald Armstrong, after Armstrong filed a petition for bankruptcy with this Court in which he claimed to own no stock or interests in incorporated businesses. Armstrong, however, is the sole shareholder in a company which he incorporated in 1987, the Gerald Armstrong Corporation ("GAC") Armstrong claimed under oath in May, 1995, that the estimated value of GAC's assets was $1 billion to $1.5 billion [Ex. A, 545:19 - 549:18].

In response to the Church's straightforward complaint, Armstrong has filed a 40-page answer, which consists of a lengthy diatribe of scandalous, irrelevant, and **ad hominum** attacks on plaintiff, plaintiff's religion, plaintiff's counsel, and the deceased founder of the Scientology religion; argumentative "specific denials" which ignore plaintiff's pleading while repeating his scandalous accusations; and forty-five "affirmative defenses," which consist solely of titles.

In short, the amended answer is not what is required by Rule 8(e): a responsive pleading which is "simple, concise, and direct." If permitted to stand, the amended answer would allow literally hundreds of highly prejudicial allegations, all of them irrelevant to this action, to stand as part of the pleadings, which are supposed to frame the issues of the litigation. Armstrong's amended answer should be stricken, pursuant to Rule 12(f), and Armstrong admonished that he, like other litigants, is required to follow the Bankruptcy Rules and the Federal Rules of Civil Procedure in this Court.

II. STATEMENT OF FACTS

Debtor Armstrong filed his petition in bankruptcy on April 19, 1995. Thereafter, creditor Church of Scientology International filed a motion for relief from stay, in order to pursue to its conclusion a pending state court action for breach of contract. That motion was granted by this Court on May 25, 1995. In the state case, potentially dispositive motions for summary adjudication are pending, and scheduled to be heard on September 29, 1995.

On July 11, 1995, the Church filed an adversary petition with this Court, seeking a determination (1) that Armstrong's debts are not dischargeable pursuant to 11 U.S.C. § 727(a)(4)(A); (2) that Armstrong's debts are not dischargeable pursuant to 11 U.S.C. § 727(a)(5); and (3) that Armstrong's debt to the Church is not dischargeable pursuant to 11 U.S.C. § 523(a)(2). The basis for the Church's complaint is simple and straightforward: Armstrong failed to disclose substantial assets in his petition for bankruptcy or, if the assets were dissipated prior to filing, has no adequate explanation for their dissipation, and Armstrong entered into the underlying agreement with the Church by fraud and deceit. [Complaint, paras. 21, 26-29, 31-37.][1]

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[1] The evidence supporting plaintiff's claims is also simple and straightforward: inter alia, Armstrong's testimony under oath concerning the ownership and value of the asset in question (interest in the Gerald Armstrong Corporation); Armstrong's contract with the Church [Exhibit A to the Complaint]; judicial orders enforcing the contract; and a videotape, made at the time

On August 14, 1995, Armstrong filed an answer to the Complaint. This initial document consisted of a 20-page narrative titled "Introduction" and "History," a listing of the titles of 45 "Affirmative Defenses," and a single sentence "General Denial." On August 18, 1995, Armstrong amended his answer. The amended answer includes all of the material in the original answer, and adds a 17-page series of "Specific Denials," making it 40 pages in length.

The answer lacks connection both to the issues of the complaint. The "Introduction" and "History" consist of a rambling, disjointed narrative in which Armstrong purports to describe, in the most vituperative terms imaginable, his views, feelings, beliefs, and arguments about his former religion and its Founder; the plaintiff and its leaders; the plaintiffs' lawyers; and all of the judges who have in the past ruled against him. The material covers, roughly, Armstrong's allegations about his religious experiences in and with Scientology (from 1969 to 1982); his personal characterization of the Scientology religion; his viewpoint that the Church and each of its members is "evil" and "neo-satanic;" and his opinion that all of his actions are divinely inspired and constitutionally protected. None of this material is responsive to any allegation contained in the complaint, nor is it material to any issue presented by this case.

Much of the text of the 17 pages of "Specific Denials" is

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that the contract was signed, in which Armstrong made the false representations.

repetition of the allegations contained in the narrative portions of the answer, coupled with denials or admissions of some parts of the allegations contained in the Complaint.

While burying the Court with extraneous and irrelevant allegations, Armstrong has simultaneously failed to make specific allegations which he is required to make. For example, contrary to B.R. Rule 7012(b), Armstrong refuses to admit or deny that this is a core proceeding. [Amended Answer, ¶ 2.] He has also listed by name 45 "affirmative defenses," but he has made no allegations concerning any of them, as required by F.R.Civ.P. 8(c).

III. ARGUMENT

Rule 12(f) provides that a court may strike "any insufficient defense or any redundant, immaterial, impertinent or scandalous matter." Rule 8(b) provides that a defendant "shall state in short and plain terms the party's defenses to each claim asserted, and shall admit or deny the averments upon which the adverse party relies." Rule 8(e) provides that, "[e]ach averment of a pleading shall be simple, concise and direct." These rules, and the cases interpreting them, provide the ample authority for the relief which the Church seeks.

A. Armstrong's Answer Should Be Stricken Because It Consists Almost Entirely Of Allegations Which Are Impertinent, Immaterial, And Scandalous

"The function of a 12(f) motion to strike is to avoid the expenditure of time and money that must arise from litigating spurious issues by dispensing with those issues prior to trial. . . ." Fantasy, Inc. v. Fogerty, 984 F.2d 1524, 1527 (9th

Cir. 1993) quoting Sidney-Vinstein v. A.H. Robbins Co., 697 F.2d 880, 885 (9th Cir. 1983). In Fogerty, the Ninth Circuit delineated some of the types of material which is properly the subject of a motion to dismiss:

> "Immaterial" matter is that which has no essential or important relationship to the claim for relief or the defenses being pleaded. "Impertinent" matter consists of statements that do not pertain, and are not necessary, to the issues in question. **Superfluous historical allegations are a proper subject of a motion to strike.**

697 F.2d at 1527 (citations omitted, emphasis supplied).

In Fogerty, the defendant to a copyright claim included lengthy historical allegations in his answer, and argued that he was trying to show a "pattern of abuse" to support his claim that the plaintiff had breached a music publishing agreement, justifying his own breaches. The district court ordered the allegations stricken, and the Ninth Circuit upheld the decision, noting that the district court had correctly found that the lengthy historical allegations, rather than providing "foundational facts" or "background," as claimed by the defendant, "created serious risks of prejudice to [plaintiff], delay and confusion of the issues." Id at 1528. The allegations, like those made here, "consisted of stale and barred charges that had already been extensively litigated, and would have been burdensome" for the plaintiff to respond to. Id. Further, the court noted, the stricken allegations would have "unnecessarily complicated the trial of the copyright claim. . . potentially adding weeks to the trial." Id. Each of these reasons supported the trial court's granting of plaintiff's motion to strike.

Allegations are stricken even more readily by courts if they are "scandalous" in addition to being immaterial. "Allegations may be stricken as scandalous if the matter bears no possible relation to the controversy or may cause the objecting party prejudice." Talbot v. Robert Matthews Distributing Co., 961 F.2d 654, 664 (7th Cir. 1992) (Striking allegations in a labor action that the defendants had intentionally caused an outbreak of salmonella poisoning). Moreover, "Rule 8(e) demands conciseness in pleading. Courts will not permit a party to use his pleadings as a dumping ground for that evidence which he may not otherwise be able to present to the trier of the facts." Budget Dress Corp. v. International Ladies' Garment Workers' Union, AFL-CIO 25 F.R.D. 506, 508 (S.D.N.Y. 1959) (Striking allegations in answer, made "with gruesome and evidentiary detail," of conspiracies between plaintiff and "racketeers").

Nor does a litigant's pro se status give him carte blanche to use the Court's files as a "dumping ground." In Stanfield v. Horn, 704 F. Supp. 1486 (M.D. Tenn. 1988), for example, a law student who failed the bar exam brought a civil rights action against various state officers pro se. When the magistrate issued a report recommending that the case be dismissed for lack of subject matter jurisdiction, the plaintiff filed a 117-page objection to the magistrate's report which vigorously attacked the magistrate, claiming that he had "deliberately, willfully, intentionally and wrongfully distorted, misrepresented, falsified and misinterpreted" the facts of her case. Id. at 1486. Noting that, "[a] scandalous matter is that which improperly casts a derogatory light on someone, most typically a party to the action" the court found that the plaintiff's pleadings were "indecent and violative of every rule of pleading and should not be permitted to pollute the records of the Court." Id. at 1487. The Objection was stricken in toto. Accord, Ex Parte Tyler, 70 F.R.D. 456 (E.D.Mo. 1976) (Pro se complaint containing "immaterial, impertinent or scandalous matter" stricken in toto.); Mahurin v. Moss, 313 F.Supp. 1263 (E.D. Mo. 1970) (Allegations in "incoherent, rambling and largely unintelligible" pro se complaint that certain defendants were gangsters controlled by the Mafia stricken under Rule 12(f)).

Here, Armstrong has presented an answer which consists almost entirely of allegations which are, rambling, disjointed, immaterial, impertinent and scandalous, by any definition. He begins his amended answer with a 4-page "introduction" and a 16-page :history" which do not address any of the issues presented in the complaint, and which do not set forth any concise statement of a defense. Rather, these pages comprise a lengthy and scandalous diatribe, viciously attacking the Church[2], the founder of the Scientology religion,[3] its present ecclesiastical leaders,[4] its religious philosophy,[5] its attorneys,[6] and even judges who have ruled against him,[7] while simultaneously proclaiming that Armstrong is divinely inspired in his words and actions.[8] These allegations are reiterated and repeated throughout the "Specific Denials," rendering those "denials" an unintelligible diatribe against the "evils" that Armstrong perceives rather than a series of specific responses to allegations in the Complaint.

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[2] For example, Armstrong falsely alleges that plaintiff Church, "has a reputation in its legal affairs for dirty tricks, threat, dishonesty, deception, attrition and overwhelm which is widely known and feared by this country's attorneys and by the media." Am.Answer at 3; that the Church, "also has a widely known reputation for using bullying and dishonest private investigators to harass perceived opponents pursuant to 'fair game' and for shielding their aggressive and corrupt activities behind the work product privilege of corrupt attorneys." Id.; and that the Church obtained its tax exempt status (which was the result of the most extensive IRS investigation of any church in the history of this country), by "illegal means." Id. at 20.

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[3] Armstrong, for example, falsely alleges that Mr. Hubbard, who has been dead for nearly 10 years, was "paranoid," "schizophrenic," Id. at 1; a "pathological liar," "greedy," "lustful of power," and "vindictive," Id. at 1, 7; a bigamist, id., a drug addict, id. at 8, and a neo-satanist, id at 6.

[4] Armstrong, for example, falsely accuses current Scientology religious leaders of "harassing" him, by "judicial enforcement of an illegal and evil contract," Id. at 3; "subjecting" him to a "campaign of covert and over character assassination," Id.; and "involvement" "in white collar crime, including securities scams and extortion." Id. at 20.

[5] Armstrong falsely proclaims, for example, that Scientology, an established world religion with millions of adherents, is "neo-satanic," id. at 3, 18, "anti-Christian," id. at 4, and a "religious fraud," id. at 19.

[6] Armstrong refers to Scientology's counsel as "corrupt," Id. at 3, and falsely accuses that one of the attorneys representing the Church in this action, Laurie Bartilson, of executing false statements concerning him, because she is allegedly, "completely under the power of David Miscavige." Id. at 20.

[7] For example, Armstrong falsely alleges that the Honorable Gary Thomas was "deceived," after "forum shopping" by the Church, into holding that Armstrong's contract with the Church was valid and enforceable, and that this ruling was "false," "obnoxious" and "evil." Id at 16.

[8] Armstrong alleges, for example, that, "God in this litigation is pointing out gently that He is in charge," Id., at 21; indeed, according to Armstrong, God is responsible for Armstrong's failure to include his ownership of the Gerald Armstrong Corporation on his petition for bankruptcy, id at 36. Armstrong alleges that God told him to give away all of his assets in 1990, id. at 27 -30, and claims that God gave him something he calls "the Unified Field," which he considers to be "mathematical proof of God's guidance." Id. at 34. He claims that all of his actions "are religiously motivated and completely protected by this country's and state's constitutions." Id .at 21.

None of these allegations have any material bearing on the instant action. Most describe Armstrong's thoughts, reactions, ideas and viewpoints which he acquired in (variously) 1969, 1984, 1986, and 1990. They bear no relationship to whether or not Armstrong made a false declaration in connection with his bankruptcy in May, 1995, or whether Armstrong made false representations when he entered into a contract with the Church, rendering his present obligation to the Church nondischargeable. Those are the issues presented by the complaint in this court. Questions concerning the validity of the contract in question and the amount of Armstrong's obligation are being determined by the state court action, which Armstrong interrupted with his petition for bankruptcy, and concerning which the bankruptcy stay has been lifted. Like the "history" of "stale and barred charges" alleged in Fogerty, supra, Armstrong's religious history and bitter hatred for his former religion do not present legitimate questions to be determined in this (or any) Court, and Armstrong's expression of them is unequivocally prejudicial to plaintiff. Not only are these unsupported and insupportable allegations vicious in their scandalous attacks against plaintiff and anyone associated with plaintiff, but the presentation of evidence concerning these allegations would lengthen the trial in this action by many months.

B. Armstrong's Affirmative Defenses Must Be Stricken Because They Are Insufficient On Their Face

Federal Rule of Civil Procedure 12(f) also provides that "the court may order stricken from any pleading any insufficient defense. . . ." Affirmative defenses, like claims, "must meet the pleading requirements of Fed.Civ.P. 8(a)." Flasza v. TNT Holland Motor Express, Inc., 155 F.R.D. 612, 613 (N.D.Ill.1994). Accordingly, "affirmative defenses must set forth a 'short and plain statement' of the defense asserted. **If an affirmative defense is insufficient on its face, or comprises no more than 'bare bones conclusory allegations,' it must be stricken.**" Id. at 613-614 (emphasis supplied).

Here, Armstrong has listed 45 "affirmative defenses" by number and title (e.g., "SIXTH AFFIRMATIVE DEFENSE (Fraud and Deceit)."). He has not made "bare bones conclusory" allegations to support the defenses -- he has made **no** allegations to support the defenses. It is just as if plaintiff had filed a complaint stating "FIRST CLAIM FOR RELIEF (For a Determination That Armstrong's Debts Are Not Dischargeable)" and nothing more after that. Needless to say, this gives plaintiff insufficient notice of what facts Armstrong is relying on to support his defensive claims. Indeed, many of the "defenses" are completely inapplicable in an action simply challenging the discharge of a bankruptcy.[9] Such a complaint would be insufficient on its face, and Armstrong's defenses are insufficient on their face. Pursuant to Rule 12(f), supra, they, too, should be stricken.

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[9] For instance, Armstrong claims such defenses as, "This Court Cannot Enjoin the Practice of a Profession," "Unclean Hands," "Estoppel, "Fraud and Deceit," "Waiver," "Impossibility," "First Amendment -- Religion," "First Amendment -- Press," "Due Process," and a score of others, none of which are applicable to

IV. CONCLUSION

For the reasons set forth above, Armstrong's answer must be stricken as "immaterial, impertinent and scandalous," pursuant to Rule 12(f). His affirmative defenses utterly fail to meet applicable pleading requirements and should also be stricken.

Dated: September 5, 1995

Respectfully submitted

WILSON, RYAN & CAMPILONGO

By: ____________________
Andrew H. Wilson

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Attorneys for Plaintiff
CHURCH OF SCIENTOLOGY
INTERNATIONAL

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plaintiff's claims.

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SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF LOS ANGELES

---oOo---

CERTIFIED COPY

CHURCH OF SCIENTOLOGY INTERNATIONAL, a California not-for-profit religious corporation, Plaintiff, vs. GERALD ARMSTRONG; DOES 1 through 25, inclusive, Defendants.	Case No. BC 052395

DEPOSITION OF

GERALD ARMSTRONG

VOLUME V

PAGES 525 - 624

WEDNESDAY, MARCH 10, 1993

REPORTED BY: LYNN P. NYLUND, CSR NO. 3696

Mary Hillabrand, Inc.
520 Sutter Street
San Francisco, CA 94102

Ex. A

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answer any more questions on the subject, so that's the area. That's what I am entitled to and that is another question.

What was the value of the real property that you gave away in August of 1990?

A. I don't know.

Q. How much real property did you give away in August of 1990?

A. I was on title on one property.

Q. Where was that located?

A. 707 Fawn Drive.

Q. To whom did you convey it?

A. Michael Walton.

Q. Did you live at 707 Fawn Drive?

A. Yes.

Q. Did you continue to live there after you conveyed the title to him?

A. Off and on.

Q. What was the value of the stocks that you gave away in August of 1990?

A. A million.

Q. To whom did you give the stocks?

A. I decline to answer that.

Q. Were the stocks stocks in public-traded corporations?

A. No.

Q. Private corporations?

A. Yes.

Q. What corporations?

A. It is The Gerald Armstrong Corporation.

Q. How did you ascertain the value of those stocks at one million dollars?

A. Through a logical assessment of the value of the assets.

Q. Did you have any kind of independent appraiser appraise the value of the stocks or the underlying assets?

A. No, as to that transaction.

Q. Did you do that at some other point in time?

A. I have had pieces of work evaluated.

Q. Is this pieces of work that were property of the Gerald Armstrong Corporation?

A. Correct.

Q. When did you have those pieces of work evaluated?

A. Some time in the past.

Q. Before or after August of 1990?

A. Before.

Q. And the individual pieces of work that you had evaluated prior to August of 1990 were all still in

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the custody and assets of The Gerald Armstrong Corporation in August of 1990?

A. Well, not -- not some of them.

Q. Does that mean that some were and some were not?

A. Correct. Some were and some weren't.

Q. Okay. Those works that were still in the custody of The Gerald Armstrong Corporation August of 1990 that you had evaluated, what was the appraised value of those works?

A. $900,000.

Q. Did you get a written appraisal?

A. No.

Q. Who performed the evaluation for you?

A. I decline to say.

Q. What was the nature of the work that you had evaluated?

A. Artistic and literary.

Q. Were you the author of the works?

A. For the most part, yes.

Q. What happened to the work that you had evaluated that was not still property of the Armstrong Corporation in August of 1990?

A. I don't know what ultimately happened to it, but I know that it was stolen from the trunk of my car by your organization and that it ended up in the hands of David Miscavige, so you know where it is and I don't.

Q. When did you have evaluated the work that you allege was stolen from the trunk of your car?

A. Sometime prior to its theft.

Q. Do you remember the date?

A. Not specifically.

Q. Do you remember the year?

A. 1984.

Q. Who evaluated it?

A. I decline to say.

Q. What do you claim the evaluator appraised its monetary value as?

A. $50,000.

Q. Did you receive a written appraisal or evaluation from the person who evaluated it?

A. No.

Q. Was it someone other than yourself?

A. No.

Q. So that's the value that you placed on it?

A. Oh, I am sorry. Yes, it was.

Q. Yes, it was. And you are changing your previous answer. Yes, it was someone other than you?

A. Someone other than myself.

Q. Whose name you won't tell me?

A. Yes.

Q. Was it the same person who evaluated the works at $900,000?

A. No.

Q. What year were the other works that you say were evaluated at $900,000 evaluated?

A. I think '89.

Q. Are these still works -- works still the property of The Gerald Armstrong Corporation?

A. Most of them.

Q. What happened to the works that are not any longer property of The Gerald Armstrong Corporation?

A. The corporation gave them to me. I -- that's other than the ones which were taken.

Q. So what is the value of the evaluated amount attributed to the works that still remain the property of The Gerald Armstrong Corporation?

A. I think they are close to 1.5 billion.

Q. And who's evaluated them at that amount?

A. I did.

Q. Did you have any independent appraiser evaluate your amount?

A. No.

Q. So that's your estimate of their worth?

A. Right.

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ORIGINAL

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FILED
NOV 29 1995
HOWARD HANSON
MARIN COUNTY CLERK
by J. Steele, Deputy

SUPERIOR COURT OF THE STATE OF CALIFORNIA, COUNTY OF MARIN

CHURCH OF SCIENTOLOGY INTERNATINOAL

Plaintiff,

vs.

GERALD ARMSTRONG

Defendant

Case No. 157 680

ARMSTRONG'S REPLY MEMORANDUM IN SUPPORT OF MOTION FOR RECONSIDERATION OF GRANT OF SUMMARY ADJUDICATION AS TO TWENTIETH CAUSE OF ACTION FOR OERMANENT INJUNCTION; REQUEST FOR JUDICIAL NOTICE

Date: December1 1995
Time: 9:00 A.M.
Dept: One (1)

I. INTRODUCTION

The critical error that the Court has made and concerning which Armstrong seeks reconsideration is that on a motion for summary adjudication it failed take into consideration the legal effect of the declaration and other representations made in Court by Scientology attorney Lawrence Heller. [1] This Court appears to have ignored the representations of Mr. Heller. Armstrong respectfully submits that were the Court to consider them, summary adjudication would have to be denied on at least one, and probably two, essential grounds.

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[1] Scientology attorney Lawrence Heller, who negotiated the agreement at issue on behalf of Church of Scientology International, is the representative of Scientology depicted on the videotape of Armstrong's signing of the agreement (Scientology's Evidence in Support of Motion for Summary Adjudication as to Twentieth Cause of Action, Ex. 1 (B)), advised one court in 1989 in a motion to quash a deposition subpoena served on Gerald Armstrong (that was based on the agreement) that he "was personally involved in the [1986] settlement" and stated under oath "The non-disclosure obligations were a key part of the settlement agreements insisted upon by all parties involved." (Armstrong's Separate Statement in Opposition to Summary Adjudication on Twentieth Cause of Action at ¶ 101) To the Court he further stated, "One of the key ingredients to completing these settlements, insisted upon by all parties involved, was **strict confidentiality** respecting: (1) the Scientology parishioner or staff member's experiences with the Church of Scientology; (2) **any knowledge possessed by the Scientology entities concerning those staff members or**

Mr. Heller, subject to Professional Rule 5-200 which requires him to be truthful when presenting matters to the court, stated that the confidentiality provisions of the settlement agreement at issue here were mutual and reciprocal. The impact of this undisputed piece of evidence is at minimum twofold, and one way or the other, for the purposes of summary adjudication, is dispositive.

If the Court considers Mr. Heller's judicial statements, both under oath and in the presentation of the cause to the Court, as a matter of contractual interpretation, the Court has no choice but to conclude that Mr. Heller's statements, standing alone, create an issue of fact as to the intent of the parties and the scope of the agreement. *Assuming arguendo* that the Court refuses to consider Mr. Heller's statements for the purpose of contractual interpretation, Mr. Heller's statements create an issue of fact as to whether or not Armstrong consented to the provisions of the agreement. If that to which Armstrong consented was an understanding and agreement such as that which Mr. Heller stated to the Court, an issue of fact is raised as to whether Armstrong's waiver of his First Amendment rights was knowing, intelligent and voluntary. Whichever view is adopted, the conclusion is the same. The settlement agreement cannot be enforced on a motion for summary adjudiciation because a question of fact exists either as to the parties' intent, or as to the legal effectiveness of Armstrong's consent, or as Armstrong argues, as to both.

Although Scientology claims that Armstrong's arguments are rambling, irrelevant, improper, and sanctionable, the fact remains that this Court has not considered Mr. Heller's statements, and if it does, it must grant reconsideration and deny summary adjudiciation.

II.

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parishioners." (*Id.* at _ 102) When Heller spoke to Armstrong on November 20, 1989, Heller stated that Scientology had obligations of non-disclosure as well as Armstrong. (*Id.* at ¶ 103) Scientology admits that Mr. Heller's statements do "not contradict the written Agreement at all." (Opposition to Reconsideration at p. 11:24) Such is admissible evidence (*Witkin, California Evidence, sections 637-639, 648)* admitting contract liability. (*Id. At section 670*)

HELLER'S ADMISSIONS ARE ADMISSIBLE FOR THE PURPOSES OF INTERPRETATING THE CONTRACT AND ANALYZING WHETHER OR NOT ARMSTRONG WAIVED HIS CONSTOITUTIONAL RIGHTS AND RAISES ISSUES OF FACT AS TO BOTH THUS DEFEATING SUMMARY ADJUDICATION

A. Heller's Admissions Create Ambiguity As To The Parties' Contractual Intent

Scientology contends that Armstrong has "provided no factual or legal basis for this Court to change its prior ruling." (Opposition at 7:19-20) Armstrong has provided both. It is first instructive to note that the factual issue which Armstrong implores the Court to recognize is not his undisclosed subjective intent, which, or course, would be irrelevant, (*Brant v. California Dairies, Inc.* (1935) 4 Cal.2d 128, 133), but plaintiff's disclosed intent stated by plaintiff's attorney in court that is critical. Armstrong is not asking the Court to base its decision on something that was only in his mind, and which he did not disclose to plaintiff and which admittedly no one discussed. To the contrary, what Armstrong relies on is an explicit consideration expressly articulated by plaintiff's counsel in connection with post-settlement and pre-dispute conduct in relation to the settlement negotiations which gave birth to the agreement which Armstrong submits this Court must now interpret.

Thus, the threshold determination which the Court must make is whether to admit Heller's parol evidence to construe a written instrument when its language is ambiguous.

> The test of whether parol evidence is admissible to construe an ambiguity is not whether the language appears to the court unambiguous, but whether the evidence presented is relevant to prove a meaning to which the language is "reasonably susceptible." [Citation.]
>
> The decision whether to admit parol evidence involves a two-step process. First, the court provisionally receives (without actually admitting) all credible evidence concerning the parties' intentions to determine "ambiguity," i.e. whether the language is "reasonably susceptible" to the interpretation urged by a party. If in light of the extrinsic evidence the court decides the language is "reasonably susceptible" to the interpretation urged, the extrinsic evidence is then admitted to aid in the second step - interpreting the contract.

(*Winet v. Price* (1992) 4 Cal.App.4th 1159, 1165.)

Thus, whether the contract is reasonably susceptible to a party's interpretation can be determined from two separate sources. It can be determined from the language of the contract itself, or from extrinsic evidence of the parties' intent. (*Southern California Edition v. Superior Court* (1995) ____Cal.App.4th____, 44 Cal.Rptr.2d 227, 232.) "It is the outward expression of the agreement, rather than a party's unexpressed intention, which the court will enforce." (*Winet, supra*, at p. 1166.)

In *Southern California Edition*, the trial court granted summary judgment finding that the contract language was not ambiguous and was not reasonably susceptible to the interpretation urged by SCE. In so doing the "trial court refused to consider the evidence of [real party] Energy Development's statements to investors and to SCE on the issue of whether the contract was reasonably susceptible to the interpretation urged by SCE. ... We hold that the trial court erred in not considering this evidence on the issue of whether the contract was ambiguous." (*Southern California Edition Co., supra*. 44 Cal.Rptr.2d at 233.) In *Southern California Edition*, SCE argued that Energy Development's conduct was evidence of how it interpreted its rights under the contract. The Court of Appeals agreed. It stated

> The rule is well-settled that in construing the terms of the contract the construction given it by the acts and conduct of the parties with knowledge of its terms, and before any controversy has arisen as to its meaning, is admissible on the issue of the parties' intent. [Citation.] Contrary to Energy Development's claim, this rule is not limited to the joint conduct of the parties in the course of the performance of the contract. As stated in Corbin on Contracts, "The practical interpretation of the contract by one party, evidenced by his words or acts, can be used against him on behalf of the other party, even though that other party had no knowledge of those or acts when they occurred and did not concur in them. In the litigation that has insued, one who is maintaining the same interpretation that is evidenced by the other party's earlier words, and acts, can introduce them to support his contention." [Citations.] We emphasize that the conduct of one party to the contract is by no means conclusive evidence as to the meaning of the contract. It is relevant, however, to show the contract is *reasonably susceptible* to the meaning evidenced by that party's conduct.

(*Id.* 44 Cal.Rptr.2d at 234.)

In *Heston v. Farmer's Insurance Group* (1984) 160 Cal.App.3d 402, the appellate court addressed a situation in a certain material respect quite close to that before the Court now. In the trial court the parties argued differing theories of contractual interpretation as to a non-competition agreement. Heston submitted to the trial court a brief submitted by Farmers' counsel before the National Labor Relations Board three years prior to the creation of the contract being litigated. In the brief, farmers' counsel argued in favor of the very interpretation urged by Heston and repudiated by Farmers in the Heston litigation. The court of appeal held that the brief was properly admitted "to show that both he and Farmers intended the Agreement to mean the same thing. The interpretation offered by Farmers' counsel in the NLRB brief was furthermore consistent with the language used and with a meaning to which the language was reasonably susceptible." (*Id.* at 414-415.) There is little, if any, difference between Farmers counsel's NLRB brief adopting the contractual interpretation urged by Hestor, and Heller's brief and declaration in the instant case. Heller's judicial statements raise an issue of fact as to the intent of the parties to have included within its scope obligations of mutual confidentiality. This being so, summary adjudication is necessarily precluded.

Finally, in *Vega v. Western Empire Insurance Co.* (1985) 170 Cal.App.3d 922 the appellate court addressed whether or not a post-verdict settlement and Civil Code section 1542 waiver supported the trial court's grant of summary judgment in favor of an insurance carrier against whom Vega sought liability for bad faith. Western argued below that the contract language specifically releasing it from liability "for injuries known and unknown" included within its scope liability for bad faith. Based upon Vega's declaration that he did not intend to so release Western, and the circumstances under which the agreement was executed, the appellate court reversed finding that there was an issue of fact as to the parties' intent. In the instant case, the evidence, as argued above, is stronger than any declaration by one of the parties. [2]

Mr. Heller's statements constitute but a single item of circumstances which gave rise to the agreement. In addition, the Court must take into consideration the facts that Judge Brecjkenridge had judicially credited Armstrong's testimony, slammed Scientology as being a vicious organization that had no compunction regarding violating the rights of others, and ordered that both Armstrong and his counsel, Michael J. Flynn, were free to discuss their knowledge of Scientology and distribute documents therefrom. In addition, less than six months before a Los Angeles County jury had awarded $25 million in punitive damages against Scientology in favor of Lawrence Wollersheim (Declaration of Lawrence Wollersheim in Opposition to Summary Judgment, on 20th Cause of Action filed April 10, 1995, at 1:10-17) and Armstrong had a cross-complaint against Scientology about to go to trial that involved the same type of "fair game" activities that had been in the middle of Wollersheim's case. In light of these facts, while $800,000 is undoubtedly a substantial sum of money, it cannot be said as a matter of law that Armstrong sold his right to his reputation and name so as to allow Scientology to lie about him as part of a massive public relations campaign. Indeed, given the tenor of the litigation as it then existed, and Judge Breckenridge's judgments regarding Armstrong and Scientology, the agreement is "reasonably susceptible" of the interpretation which Armstrong hereby urges. [3]

---

[2] In support of its opposition to the instant motion, Scientology submits additional evidence aside from that which was before the Court on summary judgment. Specifically, it submits deposition testimony from Armstrong which it claims to "contradict" Armstrong's reciprocity argument. Armstrong objects to this evidence as irrelevant and improperly placed before the Court because it was not part of the summary judgment litigation notwithstanding the fact that the issue of mutuality was raised therein. Reserving said objections, Armstrong notes that his testimony in no way contradicts his position, but is completely consistent with Heller's judicial statements. "Q. And at the time you got that agreement you recognized that problem with it, that it didn't prohibit them from saying whatever they wanted about you, right? A. Well, I also understood from basic understanding and from talking to Michael Flynn that as soon as they open their mouth and say one word, they've waived it, you have a new unit of time, they've violated it, that's it, you're free to talk, you can respond because you cannot, this does not have to do with future acts." Exhibit H to Bartilson Decl. In opposition to Motion at 160:19-161:3.) Armstrong tenders the same objections to Exhibit G submitted by plaintiff in opposition to the instant motion, and reserving the same, notes that Exhibit G makes reference to the "four-corners of the document" and does not include any reference to the circumstances surrounding the execution of the agreement. Thus, neither item of evidence supports Scientology's claim that Armstrong engages in "double speak."

B. Heller's Judicial Statements Raise An Issue Of Fact Whether Armstrong Consented To Waive His First Amendment Rights To Free Speech So as To Become Limp Fodder For Scientology's Slander Machine And Give Up His First Amendment Rights To Religious Liberty As Well.

Even if the Court were to exclude Mr. Heller's judicial statements regarding CSI intent in entering the agreement, said statement still raise issues of fact with respect to whether or not Armstrong waived his First Amendment rights. In order for a waiver of First Amendment rights to be binding and effective, the waiver must be made "voluntarily, knowingly, and intelligently." (*ITT Talcum Products Corp. v. Dolly* (1989) 214 Cal.App.3d 307, 319.) Assuming that when Heller was making honest representations in judicial proceedings and not seeking to mislead the Court in violation of his professional duties, it necessarily follows that there is an issue of fact whether Armstrong's purported First Amendment waiver was effective. If Armstrong believed that the confidentiality provisions were mutual, then his waiver of First Amendment rights was not voluntary, knowing and intelligent because it was based upon a misperception that has been support by Mr. Heller.

---

[3] Armstrong calls to the Court's attention the expedient nature of the various representations which Scientology makes to different Courts. In October 1989, Mr. Heller told the Los Angeles Superior Court that the confidentiality provisions of the agreement applied to all parties and that "Peace has reigned since the time the interested parties entered into the settlements, all parties having exercised good faith in carrying out the terms of the settlement, including the obligations of confidentiality." (Exhibit 1(A)(D) to Armstrong's Evidence in Opposition at 4:9-19) In October 1987, Kenneth Long, a paralegal for Church of Scientology of California and Church of Scientology International for the last 15 year, told the High Court if Justice in Great Britain that "Gerald Armstrong has been an admitted agent provocateur of the U.S. Federal Government who planned to plant forged documents in Church files which would then be "found" by Federal officials in subsequent investigation as evidence of criminal activity." (Armstrong's Evidence in Opposition to Summary Judgment at Ex. 1 (A)(H) at paragraph 9; Ex. 1 (A)(I) at paragraph 9.) In addition, Long stated that Armstrong had violated orders in ht e litigation which was supposedly covered by the settlement agreement. (*Id.* at Ex. 1 (A)(H) at paragraphs 3, 7; Ex. 1(A)(I) at paragraphs 7, 9; Ex. 1 (A)(J) at paragraph 15; Ex. 1 (A)(K) at paragraph 15.) In light of Mr. Heller's statements regarding the mutuality of the confidentiality provisions, Mr. Long's statements can only be considered violations thereof. That being the case, Mr. Armstrong's counter performance is excused. This raises further factual questions with respect to whether or not Scientology can enforce the confidentiality provisions against Armstrong, or whether its own breach precludes it from so doing.

In addition to Mr. Heller's statements, all of the facts of the facts surrounding the settlement agreement support the view that the requirement of silence was mutual. Throughout the initial litigation, Scientology had tried to silence Armstrong and had characterized him in slanderous ways. When Judge Breckenridge resoundingly vindicated Armstrong by crediting him as truthful and freeing him from any restraint on his ability to freely speak about Scientology, it makes no sense that Armstrong would agree to Scientology being free to slander him with impunity while he would have to maintain silence or risk being sued. Armstrong's track record was simply not such as to be susceptible of prostituting himself for money. When one takes the additional fact of the amount of the $30 million judgment in *Wollersheim v. Church of Scientology of California* (1989) 212 Cal.App.3d 872 was handed down in July 1986, in conjunction with Armstrong's cross-complaint on the threshold of trial in December 1986, the $800,000 settlement amount makes more sense. In addition, the $800,000 figure was arrived at between Armstrong and his counsel and his counsel's 17 other settling clients, not between Armstrong and Scientology. That amount was based upon the following considerations:

> [W]e acknowledge that many of the cases/clients involved in this settlement have been in litigation against the Church of Scientology for than six to seven years, that many have been subjected to intense, and prolonged harassment by the Church of scientology throughout the litigation, and that the value of their respective claims stated therein in measured in part by the (a) length and degree of harassment; (b) length and degree of involvement in the litigation; (c) the individual nature of each respective claim in connection with either their involvement with the Church of Scientology as a member and/or as a litigant; (d) the unique value of each case/client based on a variety of things including, but not limited to, the current procedural posture of a case, specific facts unique to each case, and financial, emotional or consequential damage in each case. ...

(Scientology's Evidence in Support of Summary Adjudication on 20th Cause of Action at Ex. 1 (c) at p. 4 of "document entitled "Settlement Agreement.") Aside from agreeing to maintain the confidentiality of the Settlement Agreement, said exhibit says nothings of unilateral confidentiality requirements.

III. THERRE IS A QUESTION OF FACT AS TO WHETHER THE AGREEMENT IS ILLEGAL

It is clear that the purpose of Scientology's interpretation that the confidentiality provisions are unilateral is to obstruct justice. This conclusion is inescapable when one takes Judge Breckenridge's - a jurist of considerable esteem - [4] finding that Armstrong was telling the truth about Scientology and compares that finding with the following statement by Kenneth Long:

> At the time the Church settled with Armstrong, Armstrong was both an anti-Church litigant and professional witness against the Church in other litigation. He was also a paralegal who worked extensively on anti-Church cases, and a self-designated public relations man who gave interviews to many reporters for sensationalist journals.
>
> Prior to December 1986, Armstrong had testified in 15 cases, including his own, for a total of 28 trial days, attacking the Church of Scientology and related entities and individuals.
>
> Prior to December 1986, Armstrong had been deposed for 19 days, and had executed 28 declarations in 15 cases, attacking the Church of Scientology and related entities and individuals.
>
> Before December, 1986 Armstrong appeared on more than 10 television and radio programs, attacking the Church of Scientology and related entitled and individuals. In October 1986, Armstrong was interviewed at length on the television program 2020.
>
> Before December 1986, more than 76 stories about Armstrong appeared in united States newspapers. In these articles, too, Armstrong attacked the Church and related individuals and entities.

(Request for Judicial Notice, Ex. A: Declaration of Kenneth Long)

Since Breckenridge found Armstrong to be credible, Scientology and malevolent on one hand, and Long states the breadth of Armstrong's truth-telling activities on the other, the agreement is clearly for the purpose of suppressing evidence. The fact that Scientology lies about Armstrong [5] while falsely asserting that the confidentiality provisions of the agreement are unilateral as to Armstrong only manifests a motivation that is deeply reprehensible. Yesterday, a United States District Judge found that Scientology's litigation tactics were just that, "reprehensible." She said:

> On the first issue, the Court finds that the motivation of plaintiff in filing this lawsuit against The Post is reprehensible. Although RTC [[6]]brought the complaint under traditional secular concepts of copyright and trade secret law, it has become clear that a much broader motivation prevailed – the stifling of criticism and dissent of the religious practices of Scientology and the destruction of its

---

[4] The 5th Edition of the criminal jury instruction, CALJIC, is dedicated to Paul G. Breckenridge, Jr.

[5] Scientology's complaint states, "Armstrong, a former Church member who sought, by both litigation and covert means, to disrupt the activities of his former faith, displayed through the years an intense and abiding hatred for the Church, and an eagerness to annoy and harass his former co-religionists by spreading enmity and hatred among members and former members." (Scientology's request for Judicial Notice in Support of Motion for Summary Adjudication of Twentieth cause of Action, Ex. A at 2: 10-15.) If this is true, then one "must never fear to hate the odious" and it is no basis for a lawsuit.

[6] RTC stands of Religious Technology Center, which was one of the corporate entities involved in Mission Corporate Category Sort-Out ("MCCS") and discussed in the *Zolin* litigation discussed in the moving papers. In *Church of Spiritual Technology v. United States* (1992) 26 Cl.Ct. 713, 716-717, the court notes the relationship between among MCCS, Armstrong litigation (fn 6), *Zolin* (fn. 7), and the inception of RTC as part of what it called a "*deceptis visus*."

opponents. L. Ron Hubbard, the founder of Scientology, has been quoted as looking upon the law as a tool to

> [h]arass and discourage rather than to win. The law can be used very easily to harass and enough harassment on somebody who is simply on the thin edge anyway, well knowing that he is not authorized, will generally be sufficient to cause his professional decease. If possible, of course, ruin him utterly.

(Request for Judicial Notice, Ex. B: Memorandum Opinion filed November 28, 1995 in *Religious Technology Center v. Lerma, The Washington Post, et al.* United States District Court, Eastern District of Virginia, Case No. 95-1107-A.)

While what may appear before the Court to be a simple breach of contract case (INDEED, Scientology refers to it as "a garden variety dispute" [Opposition at 13:3]) is even more reprehensible than the litigation which the judge threw out above. In order not to consider that this provides a "germ of a defense" the Court must completely disregard Mr. Heller's judicial statements.

IV. THE INJUNCTION STRIPS ARMSTRONG OF HIS ABILITY TO DEFEND HIMSELF IN ONGOING LITIGATION.

Scientology states that the "bankruptcy court has made it crystal clear to Armstrong that it has no intention of permitting him to relitigate in that forum matters which have already been litigated here." (Opposition at 2:3-5, see also 6:5-7:10) This is without any basis in fact and Armstrong objects to it as without foundation. Indeed, in the adversarial bankruptcy proceeding against Armstrong, Scientology had filed a motion to strike Armstrong's answer which was set for hearing two hours after the summary judgment motion was set forth hearing. Scientology motion to strike contended that the allegations of Armstrong's answer were "immaterial, impertinent, and scandalous." (Request for Judicial Notice, Ex. C, at 2:7 and accompanying memorandum) Since the bankruptcy court denied Scientology's motion ½ hour after this Court granted the permanent injunction, Armstrong is placed in the untenable position of being unable to defend himself in the federal action if he is to be in compliance with this Court's order. This is patently unfair and reminds of Judge Breckenridge's comment regarding Scientology litigation tactics. "First Amendment rights .. cannot be utilized by the Church, or its members, as a sword to preclude the defendant, whom the Church is suing, from defending himself." (Armstrong's Evidence in Opposition to Motion for Summary Adjudication on 20th Cause of Action at 7:2-5)

V. SANCTIONS SHOULD NOT BE AWARDED

In *Taylor v. Varga* (1995) 43 Cal.Rptr.2d 904,911, the trial court's sanction order was BASED on "duplicative requests previously denied, mis-citing of the facts and law and failure to follow applicable law." The instant motion does not fail to cite either the facts or the law. Although it does include facts and law that were before the Court on summary adjudication, it calls the Court's attention to the existence and legal effect of Mr. Heller's judicial statements, in addition to pointing out that Armstrong is prevented by the Court's order from defending himself in the federal action. At the time the summary adjudication motion was heard, this fact did not exist because had Scientology been successful in striking Armstrong's answer, he would have had little, if anything to defend. Shortly after this Court ruled, however, the federal court denied Scientology's motion to strike. Now, in that action Armstrong stands to lose because this Court's order prevent him from defending himself.

VI. CONCLUSION

Based upon the foregoing arguments, defendant Armstrong respectfully submits that his motion for reconsideration should be granted.

DATED:November 29, 1995

HUB LAW OFFICES

By:____________________

FORD GREENE

PROOF OF SERVICE

I am employed in the County of Marin, State of California. I am over the age of eighteenyears and am not a party to the above entitled action. My business address is 711 Sir Francis Drake Boulevard, San Anselmo, California. I served the following documents:

ARMSTRONG'S REPLY MEMORANDUM IN SUPPORT OF MOTION FOR RECONSIDERATION OF GRANT OF SUMMARY JUDGMENT AS TO TWENTIETH CAUSE OF ACTION FOR PERMANENT INJUNCTION; REQUEST FOR JUDICIAL NOTICE; OUT OF STATE AUTHORITIES

on the following person(s) on the date set forth below, by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid to be placed in the United States Mail at San Anselmo, California:

Andrew Wilson, Esquire
WILSON, RYAN & CAMPILONGO
235 Montgomery Street, Suite 450
San Francisco, California 94104

LAURIE J. BARTILSON,ESQ. BY FAX
Bowles & Moxon
6255 Sunset Boulevard
Suite 2000
Los Angeles, California 90028

[X] (Personal Service) I caused such envelope to be delivered by hand to the offices of the addressee.

[X] (By Mail) I caused such envelope with postage thereon fully prepaid to be placed in the United States Mail at San Anselmo, California.

[X] (State) I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

DATED: November 29, 1995

MARIN COUNTY COURTS
LAW & MOTION - IL CALENDAR
December 1, 1995

9:00 am DEPARTMENT: 01 Honorable Gary W. Thomas REPORTER: E. PASSARIS CLERK: C. SOTELO

CASE #	INV. PERSON/PARTY NAME	ATTORNEY FIRM	HEARING TYPE
5- CIV 152577	**GERALD L. THOMPSON VS COUNTY OF MARIN, ET AL**		
PLTF:	THOMPSON, GERALD L	PRO PER - present.	MOTION FOR AN ORDER FINDING AUTOMATIC STAY IS INAPPLICABLE AND DISMISSING THE ACTION (DEFT) COUNTY OF MARIN * JOINDER IN MOTION
DEFT:	CITY OF SAN RAFAEL	Davis, Eric Templeton	
DEFT:	COUNTY OF MARIN	BIALOSKY, DEBORAH	

Tentative Ruling becomes final.

THE MOTION FOR A BANKRUPTCY ORDER FINDING AUTOMATIC STAY IS GRANTED. (SEE DANIELSON V. ITT INDUSTRIAL CREDIT CO.(1988) 199 CAL.APP.3d 645, 652.) THE COURT REAFFIRMS ITS EARLIER RULING GRANTING DEFENDANTS' MOTION TO DISMISS.

CASE #	INV. PERSON/PARTY NAME	ATTORNEY FIRM	HEARING TYPE
6-CIV 157680	**CHURCH OF SCIENTOLOGY INTERNATIONAL VS. GERALD ARMSTRONG ET AL**		
PLTF:	CHURCH OF SCIENTOLOGY INTERNA	BARTILSON, LAURIE J. - present. Wilson, Ryan Et Al Wilson, Andrew Harris - present.	1) MOTION FOR SUMMARY ADJUDICATION, SEVERANCE, DISMISSAL OF UNADJUDICATED CLAIMS, AND ENTRY OF FINAL JUDGMENT (PLTF) CHURCH OF SCIENTOLOGY INTERNATIONAL 2) MOTION FOR RECONSIDERATION OF GRANT OF SUMMARY ADJUDICATION AS TO TWENTIETH CAUSE OF ACTION FOR PERMANENT INJUNCTION (DEFT) GERALD ARMSTRONG
DEFT:	ARMSTRONG, GERALD	GREENE, FORD - present.	
DEFT:	BEHBEHANI-WALTON, SOLINA		
DEFT:	THE GERALD ARMSTRONG CORPORAT	PRO PER	
DEFT:	WALTON, MICHAEL	PRO PER	
CRCO:	ARMSTRONG, GERALD	PRO PER	
CRDF:	CHURCH OF SCIENTOLOGY INTERNA	BARTILSON, LAURIE J. Wilson, Ryan Et Al Wilson, Andrew Harris	

SEE ATTACHED 3-A. Motions heard and argued. Tentative Ruling becomes final. Mr. Greene to communicate with the plaintiff's on his motion for clarification.

9520

SUPERIOR COURT, MA COUNTY, CALIFORNIA PAGE: 3-A
LAW & MOTION, CIVIL CALENDAR
RULINGS

TIME: 9:00 DATE: DECEMBER 1, 1995 DEPT: 1
JUDGE: GARY W. THOMAS REPORTER: E. PASSARIS CLERK: C. SOTELO
CASE NO: 157680 TITLE OF ACTION: CHURCH OF SCIENTOLOGY V. ARMSTRONG

DEFENDANT'S MOTION

THE MOTION OF DEFENDANT GERALD ARMSTRONG FOR RECONSIDERATION IS DENIED. AS WILL BE SHOWN, NONE OF DEFENDANT'S ARGUMENTS MEET THE REQUIREMENTS OF CODE OF CIVIL PROCEDURE SECTION 1008, SUBDIVISION (a).

ARGUMENT 1: "THE COURT MUST CONSIDER THE HELLER DECLARATION WHICH RAISES TRIABLE ISSUES AS TO WHETHER THE AGREEMENT WAS INTEGRATED AND AS TO THE PARTIES INTENT THAT THE GAG PROVISIONS WERE RECIPROCAL" - IT IS NOT SUFFICIENT FOR PURPOSES OF A RECONSIDERATION MOTION TO SIMPLY ARGUE THAT THE COURT MISINTERPRETED THE LAW. (*GILBERD* V. *AC TRANSIT* (1995) 32 CAL.APP.4TH 1494, 1500.) DEFENDANT'S PURPORTED "NEW OR DIFFERENT" EVIDENCE IS NOT "NEW OR DIFFERENT" IN THAT IT IS MERELY CUMULATIVE OF ALL OF THE OTHER EVIDENCE DEFENDANT HAS SUBMITTED IN THIS CASE TO SHOW THAT THE NATURE OF SCIENTOLOGY CONTINUES TO BE RECOGNIZED AS A LIVE PUBLIC CONTROVERSY AND THAT SCIENTOLOGY INTIMIDATES AND CRITICIZES ITS MEMBERS AND CRITICS.

ARGUMENT 2: "THE INJUNCTION VIOLATES THE FIRST AMENDMENT - THIS AGAIN IS SIMPLY AN ARGUMENT THAT THE COURT PREVIOUSLY MISINTERPRETED THE LAW. THE PURPORTED "NEW" EVIDENCE IS IRRELEVANT TO WHETHER THE INJUNCTION VIOLATES THE FIRST AMENDMENT.

ARGUMENT 3: "THE INJUNCTION PREVENTS ARMSTRONG FROM DEFENDING HIMSELF IN OTHER LITIGATION WITH CSI" - THIS IS NOT "NEW OR DIFFERENT" SINCE PLAINTIFF SOUGHT THE OBJECTED TO PROHIBITION IN ITS MOTION SEEKING A PERMANENT INJUNCTION. THE BANKRUPTCY ORDER IS NOT "NEW OR DIFFERENT" SINCE, EVEN IF THE BANKRUPTCY COURT HAD NOT DIRECTED THAT TESTIMONY BE VIA DECLARATION, DEFENDANT WOULD HAVE HAD THE SAME PURPORTED PROBLEM IN OBTAINING DIRECT TESTIMONY (I.E., HE WOULD HAVE BEEN UNABLE TO TALK TO PEOPLE ABOUT SCIENTOLOGY IN ORDER TO OBTAIN DIRECT TESTIMONY IN HIS OWN DEFENSE). EVEN IF THE COURT CONSIDERS THIS ARGUMENT, IT HAS NO MERIT IN THAT DEFENDANT CAN ASK PEOPLE TO SUBMIT DECLARATIONS WITHOUT DISCUSSING HIS VIEWS AND BELIEFS ABOUT PLAINTIFF.

(CONTINUED ON PAGE 3-A-1

TIME: 9:00 DATE: DECEMBER 1, 1995 DEPT: 1

JUDGE: GARY W. THOMAS REPORTER: E. PASSARIS CLERK: C. SOTELO

CASE NO: 157680 TITLE OF ACTION: CHURCH OF SCIENTOLOGY V. ARMSTRONG

ARGUMENT 4: "THE SEALING ORDER IS UNINTELLIGIBLE AND UNENFORCEABLE" - AGAIN, THIS IS NOT "NEW OR DIFFERENT" SINCE PLAINTIFF SOUGHT THIS RELIEF WHEN IT SOUGHT THE PERMANENT INJUNCTION.

ARGUMENT 5: "TO THE EXTENT THE AGREEMENT IS IN RESTRAINT OF TRADE, IT IS INVALID" - AGAIN, THIS IS NOT "NEW OR DIFFERENT" SINCE THE SAME HELD TRUE AT THE TIME PLAINTIFF SOUGHT THE PERMANENT INJUNCTION. IN ANY EVENT, THE INJUNCTION DOES NOT PRECLUDE DEFENDANT FROM WORKING FOR HIS ATTORNEY AS A PARALEGAL. DEFENDANT CITES NO AUTHORITY THAT THE INJUNCTION IS INVALID WHERE IS ONLY LIMITS THE CASES UPON WHICH HE CAN WORK.

ARGUMENT 6: "THE HELLER AND LONG DECLARATIONS RAISE TRIABLE ISSUES REGARDING THE DEFENSE OF UNCLEAN HANDS" - DEFENDANT POINTS ONLY TO FACTS AND EVIDENCE SET FORTH IN HIS PREVIOUS SEPARATE STATEMENT, THUS THERE IS NOTHING "NEW OR DIFFERENT" TO SUPPORT THIS ARGUMENT.

PLAINTIFF'S MOTION

PLAINTIFF'S MOTION FOR SUMMARY ADJUDICATION IS DENIED; IN ALL OTHER RESPECTS, THE MOTION IS GRANTED. AS TO THE FIRST CAUSE OF ACTION OF DEFENDANT'S CROSS-COMPLAINT, PLAINTIFF HAS FAILED TO MEET ITS BURDEN OF SHOWING THAT THE COURT HAS DETERMINED THE ENFORCEABILITY OF PARAGRAPHS 7I AND 18E OF THE SETTLEMENT AGREEMENT. THE MOTIONS DIRECTED AT THE FOURTH, SIXTH, THIRTEENTH, SIXTEENTH, SEVENTEENTH AND NINETEENTH CAUSES OF ACTION ONLY INVOLVED PARAGRAPH 7D OF THE SETTLEMENT AGREEMENT. (SEE P'S EXS. RJN C AND D.) DEFENDANT DOES NOT DISPUTE THAT "PARAGRAPHS 4A AND 4B CONCERN AN APPEAL WHICH HAS ALREADY BECOME FINAL, AND AS TO WHICH NO RIGHTS, DUTIES OR OBLIGATIONS COULD BE ENFORCED IN THE FUTURE." (SEE P'S FACT 3.) THE ORDER OF PERMANENT INJUNCTION DID NOT FIND VIOLATIONS OF PARAGRAPHS 7I AND 18E. (SEE P'S EX. RJN E, P. 2, ¶4.)

9523

Law Offices
HUB LAW OFFICES
711 Sir Francis Drake Boulevard
San Anselmo, California 94960
(415) 258-0360

FORD GREENE, Bar # 107601

Attorney for Defendant
GERALD ARMSTRONG

(SPACE BELOW PROVIDED FOR FILING STAMP ONLY)

FILED

DEC 27 1995

HOWARD HANSON
MARIN COUNTY CLERK
BY A.A. BERNARD, DEPUTY

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF MARIN

CHURCH OF SCIENTOLOGY INTERNATIONAL, a California not-for-profitreligious corporation,

Plaintiff,

vs.

GERALD ARMSTRONG; MICHAEL WALTON; THE GERALD ARMSTRONG CORPORATION, a California for-profit corporation; DOES 1 through 100, inclusive,

Defendants.

No. 157 680

SUBSTITUTION OF ATTORNEY

TO THE CLERK OF THE ABOVE-ENTITLED COURT AND TO ALL PARTIES AND THEIR COUNSEL:

Defendant Gerald Armstrong hereby substitutes Gerald Armstrong, in pro per, 715 Sir Francis Drake Boulevard, San Anselmo, California 94960-1949, Telephone (415) 456-8450 as attorney of record in the place and stead of Ford Greene, Esq

DATED: 12/20/95

GERALD ARMSTRONG
Defendant

I consent to the above substitution.

DATED: 12/20/95

HUB LAW OFFICES

By:____________________
FORD GREENE

I accept the above substitution.

DATED: 12/20/95

____
GERALD ARMSTRONG
Defendant

PROOF OF SERVICE

I am employed in the County of Marin, State of California. I am over the age of eighteen years and am not a party to the above entitled action. My business address is 711 Sir Francis Drake Boulevard, San Anselmo, California. I served the following documents: SUBSTITION OF ATTORNEY

on the following person(s) on the date set forth below, by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid to be placed in the United States Mail at San Anselmo, California:

Andrew Wilson, Esquire — By Mail
WILSON, RYAN & CAMPILONGO
235 Montgomery Street, Suite 450
San Francisco, California 94104

LAURIE J. BARTILSON,ESQ. — By Mail
Bowles & Moxon
6255 Sunset Boulevard
Suite 2000
Los Angeles, California 90028

GERALD ARMSTRONG — By Hand
715 Sir Francis Drake Boulevard
San Anselmo, CA 94960

[X] (Personal Service) I caused such envelope to be delivered by hand to the offices of the addressee.

[X] (By Mail) I caused such envelope with postage thereon fully prepaid to be placed in the United States Mail at San Anselmo, California.

[X] (State) I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

DATED: December 20, 1995

9526

FILED

JAN 24 1996

MARIN COUNTY CLERK
BY: E. Keswick Deputy

Andrew H. Wilson, SBN #063209
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(213) 960-1936
Telefax: (213) 953-3351

Attorneys for Plaintiff
and Cross-Defendant
CHURCH OF SCIENTOLOGY INTERNATIONAL

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF MARIN

CHURCH OF SCIENTOLOGY INTERNATIONAL, a California not-for-profit religious corporation,

Plaintiff,

vs.

GERALD ARMSTRONG, et al.,

Defendants.

AND RELATED CROSS-ACTIONS

CASE NO. 157 680
BC 052395 .LA
[CONSOLIDATED]

NOTICE OF MOTION AND RENEWAL MOTION FOR SUMMARY JUDGMENT OF CROSS-COMPLAINANT GERALD ARMSTRONG'S CROSS-COMPLAINT

Date: March 8, 1996
Time: 9:00 a.m.
Dept: 1

Trial Date: Vacated

MAR596/24/96 01/24/96 0 00:29 08
100.00

W

PLEASE TAKE NOTICE that on March 8, 1996, at 9:00 a.m., or as soon thereafter as may be heard in Department 1 of the above-entitled Court located at the Hall of Justice, 3501 Civic Center Dr., San Rafael, California 94908-4177, plaintiff/cross-defendant Church of Scientology International will move this Court to issue an order granting plaintiff/cross-defendant summary judgment against defendant/cross-complainant on the First Cause of Action for Declaratory Relief contained in Armstrong's First Amended Cross-Complaint from the Breach Case, pursuant to California Code of Civil Procedure Section 437c. As grounds for this motion, plaintiff/cross-defendant states that there is no justiciable controversy as to any of the matters alleged in the First Cause of Action or, in the alternative, that plaintiff/cross-defendant is entitled to a declaration of the matters alleged in that claim in its favor as a matter of law.

This Motion is based on this Notice of Motion and Motion, this Court's prior Orders granting summary adjudication, the pleadings, records and files herein, the accompanying Memorandum of Points and Authorities, the declarations and exhibits filed herewith, the accompanying Separate Statement of Undisputed Material Facts, and such other evidence as may be adduced properly at the hearing of this Motion.

Dated: January 19, 1996

Respectfully Submitted,

Laurie J. Bartilson
MOXON & BARTILSON

WILSON, RYAN & CAMPILONGO

By: Linda Fong
Andrew H. Wilson
Linda M. Fong

Attorneys for Plaintiff and Cross-Defendant CHURCH OF SCIENTOLOGY INTERNATIONAL

PROOF OF SERVICE

I declare that I am employed in the City and County of San Francisco, California.

I am over the age of eighteen years and not a party to the within entitled action. My business address is 115 Sansome Street, Suite 400, San Francisco, California.

On January 23, 1996, I caused the attached copy of **NOTICE OF MOTION AND RENEWAL MOTION FOR SUMMARY JUDGMENT OF CROSS-COMPLAINANT GERALD ARMSTRONG'S CROSS-COMPLAINT; MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF PLAINTIFF/CROSS-DEFENDANT'S RENEWAL MOTION FOR SUMMARY JUDGMENT OF DEFENDANT GERALD ARMSTRONG'S CROSS-COMPLAINT; SEPARATE STATEMENT OF UNDISPUTED FACTS IN SUPPORT OF PLAINTIFF/CROSS-DEFENDANT'S RENEWAL MOTION FOR SUMMARY JUDGMENT OF ARMSTRONG'S VERIFIED AMENDED CROSS-COMPLAINT; REQUEST FOR JUDICIAL NOTICE IN SUPPORT OF PLAINTIFF/CROSS-DEFENDANT'S RENEWAL MOTION FOR SUMMARY JUDGMENT; DECLARATION OF LAURIE J. BARTILSON IN SUPPORT OF PLAINTIFF/CROSS-DEFENDANT'S RENEWAL MOTION FOR SUMMARY JUDGMENT OF DEFENDANT GERALD ARMSTRONG'S CROSS-COMPLAINT;** and **DECLARATION OF ANDREW H. WILSON IN SUPPORT OF PLAINTIFF/CROSS-DEFENDANT'S RENEWAL MOTION FOR SUMMARY JUDGMENT** on the following in said cause, by placing for deposit with the United States Postal Service on this day in the ordinary course of business, true copies thereof enclosed in sealed envelopes. The envelopes were addressed as follows:

Gerald Armstrong
715 Sir Francis Drake Blvd.
San Anselmo, California 94960

Michael Walton
700 Larkspur Landing Circle, #120
Larkspur, CA 94939

I declare under the penalty of perjury under the laws of the

State of California that the foregoing is true and correct. Executed at San Francisco, California on January 23, 1996.

Colleen Y. Palmer

Colleen Y. Palmer

FILED

JAN 24 1996

MARIN COUNTY CLERK
BY: E. Keswick. Deputy

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Attorneys for Plaintiff
and Cross-Defendant
CHURCH OF SCIENTOLOGY INTERNATIONAL

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF MARIN

CHURCH OF SCIENTOLOGY INTERNATIONAL, a California not-for-profit religious corporation, Plaintiff, v. GERALD ARMSTRONG, et al., Defendants. AND RELATED CROSS-ACTIONS	Case No. 157 680 BC 052395 LA [CONSOLIDATED] **REQUEST FOR JUDICIAL NOTICE IN SUPPORT OF PLAINTIFF/ CROSS-DEFENDANT'S RENEWAL MOTION FOR SUMMARY JUDGMENT** Date: March 8, 1996 Time: 9:30 a.m. Dept: 1 Trial Date: Vacated

Plaintiff and Cross-Defendant Church of Scientology International request that this Court take judicial notice of the following records of the Superior Court of the County of Marin of the State of California, the Superior Court of the County of Los Angeles of the State of California, the Court of Appeal of the State of California, Second Appellate District and the United States Bankruptcy Court for the Northern District of California pursuant to

Evidence Code §§ 452 and 453.

A. Verified Amended Cross-Complaint filed by Defendant/Cross-Complainant Gerald Armstrong ("Armstrong") on October 7, 1992 in the case of Church of Scientology v. Gerald Armstrong, et al., Los Angeles Superior Court, Case No. BC 052395, a true and correct copy of which is attached hereto as Exhibit A.

B. Mutual Release of All Claims and Settlement Agreement between Church of Scientology International and Armstrong, executed in December, 1986, a true and correct copy of which is attached hereto as Exhibit B.

C. Ruling of January 27, 1995, by the Honorable Gary W. Thomas re Motion for Summary Adjudication of Issues as to the fourth and sixth causes of action in Church of Scientology International v. Armstrong, et al., Marin County Superior Court, Case No. 157680 (consolidated), a true and correct copy of which is attached hereto as Exhibit C.

D. Order of Summary Judgment as to the Thirteenth, Sixteenth, Seventeenth, and Nineteenth Causes of Action, filed on October 17, 1995 in Church of Scientology International v. Gerald Armstrong, et al. (Marin County Superior Court, Case No. 157680 (consolidated), a true and correct copy of which is attached hereto as Exhibit D.

E. Order of Permanent Injunction, filed on October 17, 1995, in Church of Scientology International v. Gerald Armstrong, et al., Marin County Superior Court, Case No. 157680 (consolidated), a true and correct copy of which is attached hereto as Exhibit E.

F. Minute Order, dated December 1, 1995, by the Honorable Gary W. Thomas denying the Church's motion for summary adjudication of the first cause of action of Armstrong's Verified Amended Cross-

Complaint but granting the motion for severance, dismissal of unadjudicated claims and entry of final judgment, a true and correct copy of which is attached hereto as Exhibit F.

G. Opinion of the Court of Appeal of the State of California, Second Appellate District, Division Four, on May 16, 1994, entered in the case of Church of Scientology of California v. Gerald Armstrong, Case No. B 069450, a true and correct copy of which is attached hereto as Exhibit G.

Dated: January ___, 1996 Respectfully Submitted,

Laurie J. Bartilson
BOWLES & MOXON

WILSON, RYAN & CAMPILONGO

By: Linda Fong
Andrew H. Wilson
Linda M. Fong

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Attorneys for Defendant
GERALD ARMSTRONG

SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF LOS ANGELES

CHURCH OF SCIENTOLOGY INTERNATIONAL, a California not-for-profit religious corporation;

Plaintiffs,

vs.

GERALD ARMSTRONG; DOES 1 through 25, inclusive,

Defendants.

GERALD ARMSTRONG,

Cross-Complainant,

-vs-

CHURCH OF SCIENTOLOGY INTERNATIONAL, a California Corporation, CHURCH OF SCIENTOLOGY OF CALIFORNIA, a California Corporation, RELIGIOUS TECHNOLOGY CENTER, a California Corporation, CHURCH OF SPIRITUAL

No. BC 052395

VERIFIED AMENDED CROSS-COMPLAINT FOR DECLARATORY RELIEF, ABUSE OF PROCESS, AND BREACH OF CONTRACT

EXHIBIT A

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TECHNOLOGY,
a California Corporation,
AUTHOR SERVICES, INCORPORATED,
a California Corporation,
AUTHOR'S FAMILY TRUST, ESTATE
OF L. RON HUBBARD, DAVID
MISCAVIGE, NORMAN STARKEY
and DOES 1 through 100,
inclusive,

Cross-Defendants.

Cross-Complainant GERALD ARMSTRONG alleges as follows:

PARTIES

1. Cross-Complainant GERALD ARMSTRONG, hereinafter, "ARMSTRONG," is a resident of Marin County, California.

2. Cross-Defendants CHURCH OF SCIENTOLOGY INTERNATIONAL, hereinafter "CSI," CHURCH OF SCIENTOLOGY OF CALIFORNIA, hereinafter "CSC," RELIGIOUS TECHNOLOGY CENTER, hereinafter "RTC," CHURCH OF SPIRITUAL TECHNOLOGY, hereinafter "COST," and AUTHOR SERVICES, INCORPORATED, hereinafter "ASI," are corporations organized and existing under the laws of the State of California, having principal offices and places of business in California and doing business within the State of California within the territorial jurisdiction of this Court.

3. Cross-Defendants AUTHOR'S FAMILY TRUST, hereinafter "AFT," and ESTATE OF L. RON HUBBARD, hereinafter "ERH," are entities that are residents of the State of California.

4. Cross-Defendant DAVID MISCAVIGE, hereinafter "MISCAVIGE," is an individual domiciled in the State of California.

5. Cross-Defendant NORMAN STARKEY, hereinafter "STARKEY," is an individual domiciled in the State of California.

6. At all times herein mentioned, each Cross-Defendant was the agent, employee or coconspirator of each of the remaining Cross-Defendants, and in doing the things herein mentioned, each Cross-Defendant was acting within the course and scope of its employment and authority as such agent and/or representative and/or employee and/or coconspirator, and with the consent of the remaining Cross-Defendants.

7. Corporate Cross-Defendants named in paragraph 2, above, are subject to a unity of control, and the separate alleged corporate structures were created as an attempt to avoid payment of taxes and civil judgments and to confuse courts and those seeking redress for these Cross-Defendants' acts. Due to the unity of personnel, commingling of assets, and commonality of business objectives, these Cross-Defendants' attempts at separation of these corporations should be disregarded.

8. The designation of Cross-Defendants as "churches" or religious entities is a sham contrived to exploit the protection of the First Amendment of the United States Constitution and to justify their criminal, and tortious acts against ARMSTRONG and their others. Cross-Defendant corporations are an international, money-making, politically motivated enterprise which subjugates and exploits its employees and customers with coercive psychological techniques, threat of violence and blackmail. Cross-Defendant corporations, CSI, CSC, RTC, COST and ASI act as one organization and are termed hereinafter as the "ORG."

9. Cross-Defendant MISCAVIGE controls and operates the ORG and uses it to enforce his orders and carry out his attacks on

groups, agencies or individuals, including the acts against ARMSTRONG alleged herein to the extent there is no separate identity between MISCAVIGE and the ORG and any claim of such separate identity should be disregarded.

10. Cross-Defendant entities AFT and ERH derive financial benefit from the ORG, participate in its acts against groups, agencies or individuals, including ARMSTRONG, and participate in MISCAVIGE's and the ORG's efforts to avoid payment of taxes and civil judgments and to confuse courts and persons seeking redress of grievances against MISCAVIGE and the ORG.

11. Cross-Defendant STARKEY controls and operates AFT and ERH and uses them in conspiracy with MISCAVIGE to carry out their attacks on groups, agencies or individuals, including the acts against ARMSTRONG alleged herein.

12. Cross-Defendants DOES 1 through 100, inclusive, are sued herein under such fictitious names for the reason that the true names and capacities of said Cross-Defendants are unknown to ARMSTRONG at this time; that when the true names and capacities of said Cross-Defendants are ascertained ARMSTRONG will ask leave of Court to amend this Cross-Complaint to insert the true names and capacities of said fictitiously named Cross-Defendants, together with any additional allegations that may be necessary in regard thereto; that each of said fictitiously named Cross-Defendants claim that ARMSTRONG has a legal obligation to Cross-Defendants by virtue of the facts set forth below; that each of said fictitiously named Cross-Defendants is in some manner legally responsible for the acts and occurrences hereinafter alleged.

FACTUAL ALLEGATIONS

13. From 1969 through 1981 ARMSTRONG was a Scientologist who devoted his life to Scientology founder, L. Ron Hubbard, the ideals he proclaimed and the Scientology organization he claimed to have built to promulgate those ideals. After leaving Hubbard's and the organization's employ and control in December 1981, ARMSTRONG was declared by the ORG a "Suppressive Person," or "SP," which designated him an "enemy," and became the target of Hubbard's policy of "Fair Game," which states:

> "ENEMY - SP Order. Fair Game. May be deprived of property or injured by any means by any Scientologist without any discipline of the Scientologist. May be tricked, sued or lied to or destroyed."

The ORG, using Cross-Defendant herein CSC as Plaintiff, filed a lawsuit, No. C 420153, in the Los Angeles Superior Court against ARMSTRONG on August 2, 1982. ARMSTRONG filed a Cross-Complaint against Cross-Defendants CSC and L. RON HUBBARD September 17, 1982, and a Third Amended Cross-Complaint against Cross-Defendants CSC, CSI, RTC and L. RON HUBBARD July 1, 1983. The Complaint and the Cross-Complaint thereto, hereinafter referred to together as Armstrong I, were bifurcated and the underlying Complaint was tried without a jury in 1984. A Memorandum of Intended Decision was rendered by Judge Paul G. Breckenridge, Jr. June 20, 1984 and entered as a Judgment August 10, 1984. The ORG appealed.

14. During the Armstrong I litigation the ORG carried out a massive and international campaign of Fair Game against ARMSTRONG and his lawyer, Michael J. Flynn of Boston,

Massachusetts, hereinafter "Flynn," who had been the prime mover in much of the anti-ORG-related litigation throughout the United States. Acts against ARMSTRONG pursuant to Fair Game included assault, an attempted staged highway accident, attempted entrapment, theft of private papers and original artwork, dissemination of information from his confidential "counseling" records, filing false criminal charges on at least five occasions, global defamation, threat of murder, and illegal electronic surveillance. ARMSTRONG learned during the period he was represented in the litigation by Flynn that Fair Game acts against Flynn included attempted murder, theft of private papers, threats against his family, defamation, thirteen frivolous lawsuits, spurious bar complaints, and framing with the forgery of a $2,000,000 check on a bank account of L. Ron Hubbard.

15. In the fall of 1986, while working as a paralegal in the Flynn firm, ARMSTRONG was aware that settlement talks involving all the ORG-related cases in which Flynn was either counsel or party were occurring in Los Angeles, California between Flynn and the ORG. Such talks had occurred a number of times over the prior four years. On December 5, 1986 ARMSTRONG was flown to Los Angeles, as were several other of Flynn's clients with claims against the organization, to participate in a "global settlement." Prior to flying to Los Angeles, ARMSTRONG had reached an agreement with Flynn on a monetary figure to settle Armstrong I, but did not know any of the other conditions of settlement.

16. After ARMSTRONG's arrival in Los Angeles, Flynn showed him a copy of a document entitled "Mutual Release of All Claims and Settlement Agreement," hereinafter "the settlement

agreement," and some other documents including affidavits, and was advised by Flynn that he was expected to sign them all. Upon reading the settlement agreement ARMSTRONG was shocked and heartsick. ARMSTRONG told Flynn that the condition of "strict confidentiality and silence with respect to his experiences with the" ORG, since it involved over seventeen years of his life was impossible to perform. ARMSTRONG told Flynn that the liquidated damages clause was outrageous; that pursuant to the agreement ARMSTRONG would have to pay $50,000.00 if he told a medical doctor or psychologist about his experiences from those years, or if he put on a job resume what positions he had held during his organization years. He told Flynn that the requirements of non-amenability to service of process and non-cooperation with persons or organizations adverse to the ORG were obstructive of justice. He told Flynn that agreeing to leave the ORG's appeal of the Breckenridge decision and not respond to any subsequent appeals was unfair to the courts and all the people who had been helped by the decision. ARMSTRONG told Flynn that an affidavit the ORG was demanding that he sign was false, that there had been no management change, that his private preclear folders were still being culled, and that he had the same disagreements with the ORG's Fair Game policies and actions, which had continued without change up to that date. ARMSTRONG told Flynn that he was being asked to betray everything and everyone he had fought for against organization injustice.

17. In answer to ARMSTRONG's objections to the settlement agreement Flynn said that the silence and liquidated damages clauses, and anything which called for obstruction of

justice were "not worth the paper they [were] printed on." Flynn stated that representation a number of times and in a number of ways; e.g., that ARMSTRONG could not contract away his Constitutional rights; that the conditions were unenforceable. Flynn stated that he had advised the ORG's lawyers that those conditions in the settlement agreement were not worth the paper they were printed on, but that the ORG, nevertheless, insisted on their inclusion and would not agree to any changes. Flynn pointed out to ARMSTRONG the clauses in the settlement agreement concerning his release of his claims against the ORG and the ORG's release of its claims against ARMSTRONG and stated that they were the essential elements of the settlement and what the organization was paying for.

18. Flynn stated to ARMSTRONG at that time that he was sick of the litigation and the threats to him and his family, and that he wanted to get out. Flynn stated that all the people involved in his side of the ORG-related litigation were sick of it and wanted to get on with their lives. He said that as a condition of settlement he and his co-counsels in the ORG-related litigation had agreed to not become involved in that litigation in the future. Flynn conveyed to ARMSTRONG a hopelessness concerning the inability of the courts of this country to deal with the ORG, its lawyers and their contemptuous abuse of the justice system. Flynn told ARMSTRONG that if he didn't sign the documents all he had to look forward to was more years of harassment and misery. When ARMSTRONG expressed his continuing objections to the settlement agreement, Edward Walters, whom Flynn had kept present in the room during this discussion with ARMSTRONG, and who was

another of Flynn's clients and a participant in the settling of Flynn's ORG-related litigation, yelled at ARMSTRONG accusing him of killing the settlement for everyone, that everyone else had signed or would sign, and that everyone else wanted the settlement. Flynn told ARMSTRONG that the ORG would only settle with everyone together; otherwise there would be no settlement. Flynn did agree to ask the ORG to include a clause in ARMSTRONG's settlement agreement allowing him to keep his creative works relating to L. Ron Hubbard or the organization.

19. Flynn stated to ARMSTRONG that a major reason for the settlement's "global" form was to give the ORG the opportunity to change its combative attitude and behavior by removing the threat he and his clients represented to it. He said that the ORG wanted peace and unless ARMSTRONG signed the ORG's documents there would be no peace. Flynn stated that the ORG's attorneys had promised that the affidavit ARMSTRONG considered false would only be used by the ORG if ARMSTRONG began attacking it after the settlement. Since ARMSTRONG had no intention of attacking the ORG, understood that the offensive affidavit would never see the light of day.

20. During ARMSTRONG's meeting with Flynn he found himself facing a dilemma. If he refused to sign the settlement agreement and affidavit all the other settling litigants, many of whom had already been flown to Los Angeles in anticipation of a settlement, would be disappointed and would continue to be subjected to organization harassment for an unknown period of time. ARMSTRONG had been positioned as a deal-breaker and led to believe he would lose the support of some, if not all, of the

settling claimants, several of whom were key witnesses in his case against the ORG. ARMSTRONG was led to believe that all the lawyers involved in his case desperately wanted out of the ORG-related litigation, and should he not sign the settlement documents would become unhappy and unwilling in their representation of him. ARMSTRONG reasoned that, on the other hand, if he did sign the settlement documents all his co-litigants, some of whom he knew to be in financial trouble, would be happy, the stress they felt would be reduced and they could get on with their lives. ARMSTRONG believed that Flynn and his other lawyers would be happy and the threat to them and their families removed. ARMSTRONG believed that the ORG would have the opportunity its lawyers said it desired to clean up its act, and start anew. Armed with Flynn's assurance that the conditions he found so offensive in the settlement agreement were not worth the paper they were printed on, and the knowledge that the ORG's attorneys were also aware of that fact, ARMSTRONG put on a happy face and on the following day went through the charade of a videotaped signing. A true and correct copy of the settlement agreement is attached hereto as Exhibit A.

21. On December 11, 1986, pursuant to stipulation, Judge Breckenridge issued orders dismissing the Armstrong I Cross-Complaint, directing that the settlement agreement be filed and retained by the clerk under seal, releasing to the ORG all trial exhibits and other documents which had been held by the clerk of the Court, and sealing the entire Court file. Despite the Court's specific order the ORG never filed the Settlement Agreement.

22. On December 18, 1986 the California Court of

Appeal, Second Appellate District, Division Three, issued an unpublished opinion dismissing the ORG's appeal from the Breckenridge decision on the ground that there would be no appealable final judgment until after trial of the Armstrong I Cross-Complaint.

23. The ORG filed a Petition for Rehearing of its appeal in the Court of Appeal, which was denied January 15, 1987; then a Petition for Review by the California Supreme Court which was denied March 11, 1987. On January 30, 1987 the ORG filed in the Los Angeles Superior Court an "Unopposed Motion to Withdraw Memorandum of Intended Decision," which Judge Breckenridge denied February 2, 1987. On February 9, 1987 the ORG filed a Notice of Appeal from the orders issued pursuant to stipulation by Judge Breckenridge on December 11, 1986.

24. The ORG, and all Cross-Defendants herein, did not desire peace from the December 1986 settlement with ARMSTRONG but an advantage wherein they could continue to attack him without his being able to respond. They removed his lawyers from defending him, and used his lead lawyer, Flynn, as their agent to relay to ARMSTRONG threats of litigation and to keep him from responding to their attacks. Immediately following the settlement ORG operatives contacted Beverly Rutherford, one of ARMSTRONG's friends from his pre-Scientology past, to try to get information from her concerning ARMSTRONG of a personal and embarrassing nature to be used against him. Also immediately following the settlement the ORG delivered a pack of documents concerning and attacking ARMSTRONG to reporters Robert Welkos and Joel Sappell of the Los Angeles Times. The ORG has continued from the date of the

settlement to collect intelligence information on ARMSTRONG, to consider him an enemy and to treat him as Fair Game. The settlement itself in intention, form, and effect was an act of Fair Game.

25. Although contacted a number of times by the media for statements concerning the ORG or Hubbard in the three years following the settlement, ARMSTRONG did not make any public statements during that period.

26. In the fall of 1987 ARMSTRONG received a document, which had been created and circulated by the ORG to discredit ARMSTRONG and writer Bent Corydon. In this document the ORG accused ARMSTRONG of "numerous false claims and lies," of "incompetence as a researcher," as having "stolen valuable documents from [ORG] archives," and of being part of "a small cabal of thieves, perjurers and disreputable sources." Such statements were themselves lies, known to the ORG to be lies, malicious, and intended to destroy ARMSTRONG's reputation and credibility. In this document as well the ORG describes ARMSTRONG's experiences in the organization as Hubbard's archivist and biographical researcher, and discusses aspects of the Armstrong I litigation, all in violation of the letter and spirit of the settlement.

27. In early 1988 ARMSTRONG received a number of affidavits the ORG had filed in Miller, which accuse ARMSTRONG of, inter alia, retaining documents in violation of a Los Angeles Superior Court order, providing documents to Russell Miller in violation of a court order, and violating court sealing orders. The affidavits accuse ARMSTRONG of being "an admitted agent

provocateur of the U.S. Federal Government who planned to plant forged documents in [ORG] files which would then be "found" by Federal officials in subsequent investigations as evidence of criminal activity," and of intending to "plant forged documents within the [ORG] and then using the contents to get the [ORG] raided. All of the ORG's accusations regarding ARMSTRONG in the affidavits filed in Miller are false, known by the ORG to be false, malicious and intended to destroy ARMSTRONG's credibility. ARMSTRONG has proven repeatedly to the ORG that its accusations are false, but the ORG has not corrected the falsehoods wherever they have been uttered or written but has continued to spread its lies about ARMSTRONG.

28. The ORG's affidavits filed in Miller also contain descriptions of ARMSTRONG's experiences in the organization and conditions of the settlement agreement. At the same time the ORG demanded that ARMSTRONG not discuss his own experiences or conditions of settlement on penalty of $50,000.00 an utterance. The ORG itself filed documents in the case straight out of the sealed Armstrong I file. Such acts are intended to bring about ARMSTRONG's mental disintegration and total destruction, are conscious and premeditated acts by the ORG of Fair Game, and have caused ARMSTRONG great anguish.

29. Also in October 1987 ARMSTRONG was contacted by a reporter from the London Sunday Times who advised him that ORG representatives had given the newspaper a pack of documents concerning him. The reporter said that the ORG representatives were claiming that ARMSTRONG was an agent provocateur who tried to plant forged documents in the organization and wanted to destroy

the scientology religion. The reporter also said that the ORG representatives had given the newspaper a videotape of ARMSTRONG they claimed showed him conspiring to overthrow ORG management. ARMSTRONG told the reporter that although he considered the ORG's attacks violated the settlement agreement he would not respond to them.

30. On December 21, 1988 ARMSTRONG received a call from Flynn who relayed a message from Michael Lee Hertzberg, one of the organization's leading lawyers stating that he wanted ARMSTRONG to file a pleading to keep the court file sealed in the face of efforts by the plaintiff in Corydon v. CSI, Los Angeles Superior Court case no. C 694401, who had filed a motion to unseal the Armstrong I court file. Flynn stated that Hertzberg had threatened that if ARMSTRONG failed to cooperate Hertzberg would release a private and personal document belonging to ARMSTRONG regarding one of his dreams specifically sealed by Judge Breckenridge in Armstrong I.

31. On December 27, 1988 ARMSTRONG spoke again by phone with Flynn, who advised ARMSTRONG that due to a court order unsealing the file in Armstrong I, he was going to file a pleading to say that the settlement documents should remain sealed. ARMSTRONG disagreed and advised Flynn he did not want such a paper filed, but on November 15, 1989 ARMSTRONG received notice that Flynn had filed such a paper against his wishes.

32. On October 11, 1989 ARMSTRONG was served with a deposition subpoena duces tecum which had been issued by Toby Plevin, an attorney representing Corydon in his litigation against the ORG.

33. On October 23, 1989 ARMSTRONG received a call from Heller who stated that the ORG would seek a protective order to prevent Armstrong's deposition in Corydon from going forward, that Armstrong should be represented by an ORG lawyer, that to maintain the settlement agreement ARMSTRONG could only answer questions by court order, that ARMSTRONG should refuse to answer the deposition questions and force Corydon to get an order from the court compelling ARMSTRONG to answer.

34. On October 25, 1989 Heller told ARMSTRONG that he had a problem with ARMSTRONG responding to deposition questions concerning such things as L. Ron Hubbard's misrepresentations or ARMSTRONG's period as Hubbard's archivist in the organization, that he wanted to have an attorney present to instruct ARMSTRONG not to answer such questions so that Corydon would have to move to compel an answer, and that if the court ordered sanctions for ARMSTRONG's refusal to answer, the ORG would indemnify him. Heller further stated that ARMSTRONG had a contractual obligation to the ORG, and that if ARMSTRONG did answer deposition questions he would have breached the settlement agreement and may be sued.

35. Based on Heller's threats, the earlier threats and ORG post-settlement attacks described above, ARMSTRONG's understanding of his importance to and involvement with the ORG, and his knowledge of the ORG, its fraud and Fair Game, moved him at that time to protect himself by beginning to assemble documentation and prepare a declaration to oppose these ORG abuses.

36. On November 1, 1989 Heller, on behalf of ORG entity ASI, a defendant in Corydon, filed a motion "to Delay or Prevent

the Taking of Certain Third Party Depositions," relating to the deposition of ARMSTRONG. Heller stated in the motion:

> "One of the key ingredients to completing these settlement, insisted upon by all parties involved, was strict confidentiality respecting: (1) the Scientology parishioner or staff member's experiences within the Church of Scientology; (2) any knowledge possessed by the Scientology entities concerning those staff members or parishioners; and (3) the terms and conditions of the settlements themselves."

37. On November 18, 1989 ARMSTRONG received a copy of a videotape edited from videotapes of him made in 1984 by ORG intelligence operatives and used thereafter against him. This copy had been given to the London Sunday Times, along with a package of documents concerning ARMSTRONG by ORG operatives. Taped to the video cassette was the business card of Eugene M. Ingram, the ORG's private detective who had set up the videotaping.

38. On November 20, 1989 Heller contacted ARMSTRONG and advised him that he wanted ARMSTRONG to execute ORG a declaration that ARMSTRONG had either no or minimal contact with Corydon in the organization, and that subsequent to leaving he had received no information about Corydon. ARMSTRONG told Heller that he knew Corydon quite well and that he saw himself as a relevant witness, and would go forward with the deposition. Heller said to do so would be a mistake because only the ORG would ever help him, that ARMSTRONG should assist the ORG because it had honored its agreement, that the ORG had signed a non-disclosure agreement as well and as far as he knew had lived up to its agreement. When

ARMSTRONG disagreed, Heller reiterated at the end of the conversation that if ARMSTRONG started to testify, for example about the Hubbard biography project, or things he and the ORG considered irrelevant, he would be sued for breach of contract.

39. On November 30, 1989 ARMSTRONG attended a hearing in Corydon of the ORG's motion to prevent his deposition from going forward where he was served with a subpoena duces tecum ordering him to appear as a witness in the trial of Religious Technology Center v. Joseph A. Yanny, Los Angeles Superior Court Case no. C 690211.

40. On February 15, 1990 ARMSTRONG received a call from one of Michael Flynn' partners, attorney Michael A. Tabb, who said he had been called by Heller who told him that the ORG considered ARMSTRONG had violated the settlement agreement by being in the courthouse when he was served in Yanny, that they intended to prove it, and that he would be sued.

41. On January 18, 1990 ARMSTRONG received a copy of Appellants' Opening Brief which the ORG had filed December 21, 1989 in appeal No. B025920 in Division Three of the Second Appellate District in the California Court of Appeal wherein the ORG sought a reversal of the 1984 Breckenridge decision. On January 30, 1990 ARMSTRONG received the Reply Brief of Appellants and Response to Cross-Appeal filed in Division Four in the Second Appellate District in an appeal entitled Church of Scientology of California and Mary Sue Hubbard, Appellants, against Gerald Armstrong, Defendant; Bent Corydon, Appellee, No. B038975 in which the ORG sought a reversal of Judge Geernaert's ruling unsealing the Armstrong I court file.

42. Because the settlement agreement prohibited ARMSTRONG from opposing any of the appeals the ORG might take, he filed a Petition for Permission to Respond in the B025920 Division Three appeal February 28, 1990, and in the B038975 Division Four appeal March 1, 1990. When his petitions were granted, ARMSTRONG filed a Respondent's Briefs opposing the ORG appeals.

43. ARMSTRONG's March 15, 1990 declaration that he had filed in the Court of Appeal was used by Corydon as an exhibit supporting a motion for an order directing non-interference with witnesses. In its opposition thereto the ORG Heller contradicted what he earlier had said to ARMSTRONG about the agreement being reciprocal, now stating that the ORG was free to talk about Armstrong, but that Armstrong was not free to talk about it. Heller's lies to ARMSTRONG, his lies in sworn declarations about the reciprocality of the settlement agreement, the trap ARMSTRONG had been placed in by the ORG and his own attorney, who, because of ORG Fair Game tactics, had deserted him, caused ARMSTRONG great distress and grief.

44. In his March 27 1990, declaration and in the opposition to plaintiff's motion for non-interference with witnesses in Corydon, Heller denied that the three telephone calls with ARMSTRONG occurred, denied offering to have the ORG pay for an attorney at ARMSTRONG's deposition in Corydon, denied offering to indemnify ARMSTRONG for sanctions which might be imposed by the court, and denied threatening ARMSTRONG with litigation. These denials are lies.

45. In his March 26, 1990 declaration, Kenneth Long, the ORG staff member who had executed a number of the affidavits

concerning ARMSTRONG which were filed in the Miller case, stated:

> "In January, 1987, following settlement of Scientology (sic) of California ("CSC"), Armstrong turned over to CSC all [ORG]-related documents in his possession. I personally inspected the documents turned over by Armstrong, and found a number of copies of the documents which Armstrong had previously sworn that he had surrendered to the Clerk of the Court. [ ] Based on my discovery of these documents, I concluded that Armstrong had intentionally perjured himself on numerous occasions, and had as well knowingly violated orders issued by judges at all levels ranging from the Los Angeles Superior Court to the Supreme Court of the United States."

Long's statement is false, reckless and malicious. Long stated as well that his affidavits attacking ARMSTRONG in Miller were necessary "to detail the elements of the breach of confidence against Miller and Penguin, and the claim could not have been brought without explaining the underlying actions taken by Armstrong."

46. On March 21, 1990 ARMSTRONG spoke by phone with Michael Flynn, who said that he had been called by Lawrence Heller two or three weeks before. Flynn said that Heller told him that ARMSTRONG was right then sitting in the courtroom at the Yanny trial and he asked Flynn to call ARMSTRONG and tell him that if he testified in Yanny he would be in violation of the settlement agreement and would be sued. ARMSTRONG had been present at the Yanny trial March 5, 1990.

47. In early April, 1990 ARMSTRONG received a call from ORG lawyer Eric Lieberman who threatened dire consequences if ARMSTRONG continued to speak out against the ORG in violation of the settlement agreement. ARMSTRONG related to Lieberman a list of the ORG's post-settlement attacks on ARMSTRONG in violation itself of the agreement. Lieberman dismissed ARMSTRONG's grievances as insignificant.

48. On July 8, 1988 the Internal Revenue Service issued a document entitled "final adverse ruling" to Cross-Defendant herein COST denying its application for tax exempt status. In that ruling the IRS stated:

> "In support of the protest (protest conference was held in January 1987) to our initial adverse ruling, we were supplied with copies of affidavits dated December 4, 1986, from Gerald Armstrong and Laurel Sullivan. Ms. Sullivan was the person in charge of the MCCS project (the ORG's "Mission Corporate Category Sort-out," the purpose of which was to devise a new organizational structure to conceal L. Ron Hubbard's continued control). The affidavits state that the new church management 'seems to have returned to the basic and lawful policies and procedures as laid out by the founder of the religion, L. Ron Hubbard.' The affidavits conclude as follows: 'Because of the foregoing, I no longer have any conflict with the Church of Scientology or individual members affiliated with the Church. Accordingly I have executed a mutual release agreement with the Church of Scientology and sign this

> affidavit in order to signify that I have no quarrel with the Church of Scientology or any of its members.'"

The ORG filed the ARMSTRONG affidavit in the COST case for the purpose of destroying his credibility and in violation of the representation the ORG had Flynn make to ARMSTRONG during settlement that such affidavit would never be used unless ARMSTRONG attacked the ORG after settlement. The ORG's filing of the affidavit, its use of the courts, and the campaign to destroy ARMSTRONG's reputation have caused ARMSTRONG great emotional distress.

49. In August 1991 while in South Africa ARMSTRONG was informed by Stuart Cutler, a lawyer for Malcolm Nothling, litigant against the ORG, that the ORG had provided ARMSTRONG's personal papers regarding the 1985 dream which had been sealed in Armstrong I, to the ORG's South African legal representatives for use against ARMSTRONG in the Nothling litigation in which ARMSTRONG was expected to testify. The dissemination of this document in South Africa caused ARMSTRONG great embarrassment and emotional distress.

50. On August 12, 1991 the ORG filed a lawsuit against 17 agents of the IRS, case no. 91-4301-SVW in United States District Court, Central District of California for more than $120,000,000.00. The ORG used therein a false rendition of the 1984 illegal videotaping of ARMSTRONG, which videotape had been sealed in the Armstrong I court file. The ORG stated in its complaint:

> "The infiltration of the [ORG] was planned by the LA CID along with former [ORG] member Gerald Armstrong, who

> planned to seed [ORG] files with forged documents which the IRS could then seize in a raid. The CID actually planned to assist Armstrong in taking over the [ORG] hierarchy which would then turn over all [ORG] documents to the IRS for their investigation."

The ORG knew that these accusations were false, knew that ARMSTRONG knew they were false.

51. Upon his return to the United States from South Africa, Armstrong visited the law office of Ford Greene who asked for his help. Armstrong, who is a trained paralegal, and lived in the same Marin County town as Greene, agreed to help him, and has been working with him from that time until the present. The moment he began working in Greene's office the ORG began to terrorize him with constant surveillance by ORG intelligence operatives, videotaped him, embarrassed him, caused disturbances in the neighborhood of Greene's law firm, and caused him great fear. The ORG has a reputation of using its intelligence operatives or private investigators to assault its perceived enemies, frame them, entrap them, terrorize them, lie about them, and steal from them. Judge Breckenridge in Armstrong I, had found that:

> "Defendant Armstrong was the subject of harassment, including being followed and surveilled by individuals who admitted employment by [the ORG]; being assaulted by one of these individuals; being struck bodily by a car driven by one of these individuals; having two attempts made by said individuals apparently to involve Defendant Armstrong in a freeway automobile accident; having said individuals come onto Defendant Armstrong's property,

spy in his windows, create disturbances, and upset his neighbors."

The August 1991 surveillance of ARMSTRONG by ORG operatives was intended to and caused ARMSTRONG severe shock and emotional distress.

52. ARMSTRONG called and wrote to ORG lawyer Eric Lieberman on August 21 and 22, 1991 protesting the surveillance, videotaping and ORG terror tactics. Lieberman never responded, but the ORG responded with renewed attacks on ARMSTRONG, filing perjurious declarations about him in the Aznaran case accusing him of, inter alia, being in Greene's office (during the period when he had been in South Africa), of being employed by Joseph Yanny while working for Greene, and of being Yanny's extension in the Aznaran case. The ORG used these lies in a series of attempts to have the Aznaran case dismissed, and in further attempts to destroy ARMSTRONG's credibility and his capacity to defend himself from the ORG's attacks. The ORG also filed perjurious declarations in Aznaran concerning the illegal 1984 Armstrong operation, claiming, inter alia, that the operation was a police-sanctioned investigation, that ARMSTRONG was plotting against the ORG and seeking out staff members who would be willing to assist him in overthrowing its leadership, and that ARMSTRONG's theory of litigation against the ORG was to fabricate the facts. These lies were used in a series of attempts to deny the Aznarans justice and to attack ARMSTRONG's credibility and leave him defenseless before the ORG's assault. The ORG moreover used in these attempts transcripts of the illegal 1984 videotaping of ARMSTRONG which had been sealed in the Armstrong I court file. The ORG knew its lies

filed in the Aznaran case regarding ARMSTRONG were lies, knew it was using sealed documents to attack ARMSTRONG, knew that such caused ARMSTRONG great emotional distress, and knew that its acts in Armstrong I had caused him emotional distress for which it had paid ARMSTRONG a significant sum of money. The ORG's statements filed in Aznaran regarding ARMSTRONG were malicious and an abuse process. ARMSTRONG filed a declaration in Aznaran dated September 3, 1991 detailing the lies the ORG had up to that time filed about him in that case and stating the truth of the matters. On June 23, 1992, Judge Ideman, presiding in the Aznaran case denied all the ORG's motions in which it had filed its attacks on ARMSTRONG.

53. On October 3, 1991 the ORG, using CSC, CSI and RTC as Plaintiffs, filed a motion in Los Angeles Superior Court in the Armstrong I case to enforce the settlement agreement in which it charged that ARMSTRONG's declaration in Aznaran which rebutted the ORG's lies filed about him in that case was a violation of the settlement agreement. That motion, in which the ORG sought from ARMSTRONG $100,000.00 in damages for his responses to ORG attacks, was denied on December 23, 1991 by Judge Geernaert, who stated during the hearing of that date:

> " So my belief is Judge Breckenridge, being a very careful judge, follows about the same practice and if he had been presented that whole agreement and if he had been asked to order its performance, he would have dug his feet in because that is one of the [ ] most ambiguous, one-sided agreements I have ever read. And I would not have ordered the enforcement of hardly any of the terms had I been asked to, even on the threat that,

okay the case is not settled.

I know we like to settle cases. But we don't want to settle cases and, in effect, prostrate the court system into making an order which is not fair or in the public interest."

54. Heedless of Judge Geernaert's comments the ORG on February 4, 1992 filed the underlying lawsuit, hereinafter Armstrong II, this time seeking $1,700,000.00 in damages. On March 26, 1992 the ORG sought to have ARMSTRONG held in contempt of court for communicating to the media about the litigation after the ORG had itself given an interview to the media and in response to the ORG's public comments about him. Judge Dufficy of the Marin Superior Court, then presiding over the Armstrong II litigation, refused to hear the ORG's effort to have ARMSTRONG found in contempt. The effort, however, demonstrates the ORG's intention: create a scenario in which ARMSTRONG responds to ORG attacks and then have him jailed for his response. Then, pursuant to ORG policy, neutralize him.

55. On February 19, 1992 Ford Greene, ARMSTRONG's attorney in Armstrong II, wrote ORG attorney Laurie Bartilson requesting that ARMSTRONG's former attorneys in Armstrong I, Michael Flynn, Julia Dragojevic and Bruce Bunch, each of whom were specifically prohibited by contract with the ORG from giving ARMSTRONG a declaration to assist him in his defense of the ORG's lawsuit to enforce the settlement agreement, be released from that prohibition so they could provide him with needed declarations. The ORG refused. On February 24, 1992 Greene wrote Bartilson requesting that the other individuals who had entered into

settlement agreements with the ORG, negotiated by the ORG with Flynn in 1986, and who were specifically prohibited from providing ARMSTRONG with a declaration to assist him in his defense of the ORG's lawsuit to enforce the settlement agreement, be released from that prohibition so they could provide him with needed declarations. Even though the ORG had used the fact of the other individuals' settlement agreements being substantially similar to the ARMSTRONG agreement, and cited to and relied on cases involving those individuals' settlements in its lawsuit against ARMSTRONG, the ORG refused to release them from their contract not to assist ARMSTRONG.

56. On May 27, 1992 at a hearing on a motion the ORG brought to obtain a preliminary injunction in this case, Los Angeles Superior Court Judge Sohigian stated:

> "The information that's being suppressed in this case, however, is information about extremely blameworthy behavior of the [ORG] which nobody owns; it is information having to do with the behavior of a high degree of offensiveness and behavior which is tortious in the extreme. It involved abusing people who are weak. It involves taking advantage of people who for one reason or another get themselves enmeshed in this extremist view in a way that makes them unable to resist it apparently. There appears to be in the history of [the ORG's] behavior a very, very substantial deviation between [the ORG's] conduct and standards of ordinary, courteous conduct and standards of ordinary honest behavior. They're just way off in a different

firmament. [The ORG's] is the kind of behavior which makes you sort of be sure you cut the deck and be sure you've counted all the cards. If you're having a friendly poker game you'd make sure to count all the chips before you dealt any cards."

Despite these statements concerning the ORG and its practices, and despite the ORG's knowledge of similar rulings and judgments in Armstrong I, the case of Wollersheim v. Scientology, the case of Allard v. Scientology, the case in England Re B & G Wards, the cases of US v. Hubbard and US v. Kember, and of articles in the Los Angeles Times in 1990 and Time magazine in 1991, the ORG continues to attack ARMSTRONG and its other perceived enemies pursuant to its basic doctrine of Fair Game. The ORG's refusal to change its posture toward ARMSTRONG in the face of evidence of its nature causes ARMSTRONG severe emotional distress. Judge Sohigian denied the ORG's motion to enforce the settlement agreement in every aspect except for his right to provide testimony in anti-ORG litigation without being first subpoenaed to provide such testimony. The Sohigian ruling left ARMSTRONG free to speak and write freely about the ORG, to provide information to government agencies without the need for a subpoena and to continue to work as a paralegal.

57. ARMSTRONG has learned that MISCAVIGE possessed ARMSTRONG's original artwork and manuscript after they were stolen from ARMSTRONG's car in 1984. MISCAVIGE told Vicki Aznaran that he had ARMSTRONG's artwork and manuscript, and he described ARMSTRONG's works as weird poetry and letters to Hubbard. ORG lawyer John Peterson in 1984, in response to ARMSTRONG's demand at

that time for return of his works denied that the ORG possessed them. Now ARMSTRONG has the proof and he demands these works' return.

58. The ORG has, for over a decade, waged a campaign of hatred and psychological violence against ARMSTRONG. This campaign has been observed and condemned by courts and the media. In 1986 as an act of calculating Fair Game it used ARMSTRONG's lawyer, himself a long time target of Fair Game, to manipulate him into a settlement of his claims against the ORG which was intended to leave him lawyer-less and defenseless so that the ORG's Fair Game efforts against him could continue unopposed. In consummate cynicism the ORG claims its purpose in the settlement was to make peace. The ORG's acts against ARMSTRONG have affected every aspect of his life, taken from him the peace and seclusion he sought and threatened his health, livelihood, friendships and his very existence. These acts must stop.

FIRST CAUSE OF ACTION

(For Declaratory Relief Against All Defendants)

59. Cross-complainant ARMSTRONG realleges paragraphs 1 through 58, inclusive, and incorporates them by reference herein as though fully set forth.

60. An actual controversy has arisen and now exists between ARMSTRONG and CSI concerning their respective rights and duties in that ARMSTRONG contends that the only provisions of the settlement agreement that have any legal force any effect were those whereby he dismissed his cross-complaint in Armstrong I in consideration for a sum of money, and that paragraphs 4A, 4B, 7D, 7E, 7G, 7H, 7I, 10, 18D, 18E of the settlement agreement are void as against

public policy and should be severed therefrom, and that CSI and its agents are not entitled to breach the settlement agreement while requiring ARMSTRONG to adhere thereto, whereas CSI disputes this contention and contends that it is entitled to enforce all provisions of the settlement agreement against ARMSTRONG notwithstanding the lack of mutuality thereof.

61. ARMSTRONG desires a judicial determination of his rights and duties, and a declaration that the only provisions of the settlement agreement which are valid are those which directly pertain to the dismissal of his cross-complaint in Armstrong I in consideration for the payment of a sum of money, and that paragraphs 4A, 4B, 7D, 7E, 7G, 7H, 7I, 10, 18D, 18E of the settlement agreement should be severed and held not to be legally enforceable because they were designed to suppress evidence and obstruct justice.

62. A judicial declaration is necessary and appropriate at this time under the circumstances in order that ARMSTRONG may ascertain his rights and duties under the settlement agreement.

63. ARMSTRONG is being harmed by the settlement agreement insofar as his First Amendment Rights are curtailed, his ability to freely pursue gainful employment is restricted, and his reputation is being attacked in judicial proceedings which he is unable to counter without risking violation of the settlement agreement.

WHEREFORE, cross-complainant seeks relief as is hereinafter pleaded.

SECOND CAUSE OF ACTION

(For Abuse Of Process Against All Defendants)

64. Cross-complainant ARMSTRONG realleges paragraphs 1 through 58, inclusive, and incorporates them by reference herein as though fully set forth.

65. Defendants, and each of them, have abused the process of this court in a wrongful manner, not proper in the regular conduct of the proceedings in Armstrong I and in Armstrong II, and in other litigation, to accomplish a purpose for which said proceedings were not designed, specifically, the suppression of evidence, the obstruction of justice, the assassination of cross-complainant's reputation, and retaliation against said cross-complainant for prevailing at trial in Armstrong I, all so as to be able to attack cross-complainant and prevent cross-complainant from being able to take any effective action to protect himself.

66. Defendants, and each of them, acted with an ulterior motive to suppress evidence, obstruct justice, assassinate cross-complainant's reputation, and to retaliate against cross-complainant in said litigations.

67. That defendants, and each of them, have committed willful acts of intimidation, threats, and submission of false and confidential documents not authorized by the process of litigation, and not proper in the regular conduct of litigation.

68. Cross-complainant has suffered damage, loss and harm, including but not limited to his reputation, his emotional tranquillity, and privacy.

69. That said damage, loss and harm was the proximate and legal result of the use of such legal process.

WHEREFORE, cross-complainant seeks relief as is hereinafter pleaded.

THIRD CAUSE OF ACTION

(Breach of Contract)

70. Cross-complainant ARMSTRONG realleges paragraphs 1 through 58, inclusive, and incorporates them by reference herein as though fully set forth.

71. CSI, and/or its agents, and/or other Scientology-related entities having engaged in on-going breaches of said settlement agreement by making reference to ARMSTRONG (a) in communications to the press, (b) in filing pleadings and declarations in various litigations.

72. By reason of said breaches of the settlement agreement, ARMSTRONG has been damaged in an amount not presently known but believed to be in excess of the jurisdiction minimum of this Court.

WHEREFORE, plaintiff prays for judgment as follows:

ON THE FIRST CAUSE OF ACTION

1. For a declaration paragraphs 4A, 4B, 7D, 7E, 7G, 7H, 7I, 10, 18D, 18E of the settlement agreement should be severed from the settlement agreement and found to be of no legal force or effect.

2. For damages according to proof.

3. For attorney's fees and costs of suit.

ON THE SECOND CAUSE OF ACTION

1. For general and compensatory damages according to proof.

2. For attorney's fees and costs of suit.

ON THE THIRD CAUSE OF ACTION

1. For compensatory and consequential damages according to proof.

2. For attorney's fees and costs of suit.

ON ALL CAUSES OF ACTION

1. For such other and further relief as the Court may deem just and proper.

Respectfully submitted,

DATED: October 7, 1992

HUB LAW OFFICES

By:____________________
FORD GREENE
Attorney for Defendant

PROOF OF SERVICE

I am employed in the County of Marin, State of California. I am over the age of eighteen years and am not a party to the above entitled action. My business address is 711 Sir Francis Drake Boulevard, San Anselmo, California. I served the following documents: CROSS-COMPLAINT FOR DECLARATORY RELIEF, ABUSE OF PROCESS AND BREACH OF CONTRACT

on the following person(s) on the date set forth below, by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid to be placed in the United States Mail at San Anselmo, California:

Andrew Wilson, Esquire
WILSON, RYAN & CAMPILONGO
235 Montgomery Street, Suite 450
San Francisco, California 94104

LAURIE J. BARTILSON, ESQ.
Bowles & Moxon
6255 Sunset Boulevard
Suite 2000
Los Angeles, California 90028

PAUL MORANTZ, ESQ.
P.O. Box 511
Pacific Palisades, CA 90272

[x] (By Mail) I caused such envelope with postage thereon fully prepaid to be placed in the United States Mail at San Anselmo, California.

[x] (State) I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

DATED: October 7, 1992

VERIFICATION

I, the undersigned, am an officer of defendant The Gerald Armstrong Corporation in the above entitled action. I know the contents of the foregoing Amended Cross-Complaint I certify that the same is true of my own knowledge, except as to the matters which are therein stated upon my information and belief, and as to those matters, I believe them to be true.

I declare under penalty of perjury that the foregoing is true and correct according to the laws of the State of California and that this declaration was executed on the October 7, 1992 at San Anselmo, California.

By: ______________________
GERALD ARMSTRONG

PROOF OF SERVICE

I am employed in the County of Marin, State of California. I am over the age of eighteen years and am not a party to the above entitled action. My business address is 711 Sir Francis Drake Boulevard, San Anselmo, California. I served the following documents: VERIFIED AMENDED CROSS-COMPLAINT FOR DECLARATORY RELIEF, ABUSE OF PROCESS AND BREACH OF CONTRACT

on the following person(s) on the date set forth below, by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid to be placed in the United States Mail at San Anselmo, California:

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Bowles & Moxon
6255 Sunset Boulevard
Suite 2000
Los Angeles, California 90028

PAUL MORANTZ, ESQ.
P.O. Box 511
Pacific Palisades, CA 90272

[x] (By Mail) I caused such envelope with postage thereon fully prepaid to be placed in the United States Mail at San Anselmo, California.

[x] (State) I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

DATED: October 7, 1992

MUTUAL RELEASE OF ALL CLAIMS AND SETTLEMENT AGREEMENT

1. This Mutual Release of All Claims and Settlement Agreement is made between Church of Scientology International (hereinafter "CSI") and Gerald Armstrong, (hereinafter "Plaintiff") Cross-Complainant in Gerald Armstrong v. Church of Scientology of California, Los Angeles Superior Court, Case No. 420 153. By this Agreement, Plaintiff hereby specifically waives and releases all claims he has or may have from the beginning of time to and including this date, including all causes of action of every kind and nature, known or unknown for acts and/or omissions against the officers, agents, representatives, employees, volunteers, directors, successors, assigns and legal counsel of CSI as well as the Church of Scientology of California, its officers, agents, representatives, employees, volunteers, directors, successors, assigns and legal counsel; Religious Technology Center, its officers, agents, representatives, employees, volunteers, directors, successors, assigns and legal counsel; all Scientology and Scientology affiliated organizations and entities and their officers, agents, representatives, employees, volunteers, directors, successors, assigns and legal counsel; Author Services, Inc., its officers, agents, representatives, employees, volunteers, directors, successors, assigns and legal counsel; L. Ron Hubbard, his heirs, beneficiaries, Estate and its executor; Author's Family Trust, its beneficiaries and its trustee; and Mary Sue Hubbard, (all hereinafter collectively referred to as the

EXHIBIT B

"Releasees"). The parties to this Agreement hereby agree as follows:

2. It is understood that this settlement is a compromise of doubtful and disputed claims, and that any payment is not to be construed, and is not intended, as an admission of liability on the part of any party to this Agreement, specifically, the Releasees, by whom liability has been and continues to be expressly denied. In executing this settlement Agreement, Plaintiff acknowledges that he has released the organizations, individuals and entities listed in the above paragraph, in addition to those defendants actually named in the above lawsuit, because among other reasons, they are third party beneficiaries of this Agreement.

3. Plaintiff has received payment of a certain monetary sum which is a portion of a total sum of money paid to his attorney, Michael J. Flynn. The total sum paid to Mr. Flynn is to settle all of the claims of Mr. Flynn's clients. Plaintiff's portion of said sum has been mutually agreed upon by Plaintiff and Michael J. Flynn. Plaintiff's signature below this paragraph acknowledges that Plaintiff is completely satisfied with the monetary consideration negotiated with and received by Michael J. Flynn. Plaintiff acknowledges that there has been a block settlement between Plaintiff's attorney, Michael J. Flynn, and the Church of Scientology and Churches and entities related to the Church of Scientology, concerning all of Mr. Flynn's clients who were in litigation with any Church of Scientology or related entity. Plaintiff has received a portion of this block

amount, the receipt of which he hereby acknowledges. Plaintiff understands that this amount is only a portion of the block settlement amount. The exact settlement sum received by Plaintiff is known only to Plaintiff and his attorney, Michael J. Flynn, and it is their wish that this remain so and that this amount remain confidential.

Signature line for Gerald Armstrong

4. For and in consideration of the above described consideration, the mutual covenants, conditions and release contained herein, Plaintiff does hereby release, acquit and forever discharge, for himself, his heirs, successors, executors, administrators and assigns, the Releasees, including Church of Scientology of California, Church of Scientology International, Religious Technology Center, all Scientology and Scientology affiliated organizations and entities, Author Services, Inc. (and for each organization or entity, its officers, agents, representatives, employees, volunteers, directors, successors, assigns and legal counsel); L. Ron Hubbard, his heirs, beneficiaries, Estate and its executor; Author's Family Trust, its beneficiaries and trustee; and Mary Sue Hubbard, and each of them, of and from any and all claims, including, but not limited to, any claims or causes of action entitled Gerald Armstrong v. Church of Scientology of California, Los Angeles Superior Court, Case No. 420 153 and all demands, damages, actions and causes of actions of every kind and nature, known or unknown,

for or because of any act or omission allegedly done by the Releasees, from the beginning of time to and including the date hereof. Therefore, Plaintiff does hereby authorize and direct his counsel to dismiss with prejudice his claims now pending in the above referenced action. The parties hereto will execute and cause to be filed a joint stipulation of dismissal in the form of the one attached hereto as Exhibit "A".

A. It is expressly understood by Plaintiff that this release and all of the terms thereof do not apply to the action brought by the Church of Scientology against Plaintiff for Conversion, Fraud and other causes of action, which action has already gone to trial and is presently pending before the Second District, Third Division of the California Appellate Court (Appeal No. B005912). The disposition of those claims are controlled by the provisions of the following paragraph hereinafter.

B. As of the date this settlement Agreement is executed, there is currently an appeal pending before the California Court of Appeal, Second Appellate District, Division 3, arising out of the above referenced action delineated as Appeal No. B005912. It is understood that this appeal arises out of the Church of Scientology's complaint against Plaintiff which is not settled herein. This appeal shall be maintained notwithstanding this Agreement. Plaintiff agrees to waive any rights he may have to take any further appeals from any decision eventually reached by the Court of Appeal or any rights he may have to oppose (by responding brief or any other means) any further appeals taken by the Church of

Scientology of California. The Church of Scientology of California shall have the right to file any further appeals it deems necessary.

5. For and in consideration of the mutual covenants, conditions and release contained herein, and Plaintiff dismissing with prejudice the action *Gerald Armstrong v. Church of Scientology of California*, Los Angeles Superior Court, Case No. 420 153, the Church of Scientology of California does hereby release, acquit and forever discharge for itself, successors and assigns, Gerald Armstrong, his agents, representatives, heirs, successors, assigns, legal counsel and estate and each of them, of and from any and all claims, causes of action, demands, damages and actions of every kind and nature, known or unknown, for or because of any act or omission allegedly done by Gerald Armstrong from the beginning of time to and including the date hereof.

6. In executing this Agreement, the parties hereto, and each of them, agree to and do hereby waive and relinquish all rights and benefits afforded under the provisions of Section 1542 of the Civil Code of the State of California, which provides as follows:

> "A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor."

7. Further, the undersigned hereby agree to the following:

A. The liability for all claims is expressly denied by the parties herein released, and this final compromise and settlement thereof shall never be treated as an admission of liability or responsibility at any time for any purpose.

B. Plaintiff has been fully advised and understands that the alleged injuries sustained by him are of such character that the full extent and type of injuries may not be known at the date hereof, and it is further understood that said alleged injuries, whether known or unknown at the date hereof, might possibly become progressively worse and that as a result, further damages may be sustained by Plaintiff; nevertheless, Plaintiff desires by this document to forever and fully release the Releasees. Plaintiff understands that by the execution of this release no further claims arising out of his experience with, or actions by, the Releasees, from the beginning of time to and including the date hereof, which may now exist or which may exist in the future may ever be asserted by him or on his behalf, against the Releasees.

C. Plaintiff agrees to assume responsibility for the payment of any attorney fee, lien or liens, imposed against him past, present, or future, known or unknown, by any person, firm, corporation or governmental entity or agency as a result of, or growing out of any of the matters referred to in this release. Plaintiff further agrees to hold harmless the parties herein released, and each of them, of and from any liability arising therefrom.

D. Plaintiff agrees never to create or publish or attempt to publish, and/or assist another to create for publication by means of magazine, article, book or other similar form, any writing or to broadcast or to assist another to create, write, film or video tape or audio tape any show, program or movie, or to grant interviews or discuss with others, concerning their experiences with the Church of Scientology, or concerning their personal or indirectly acquired knowledge or information concerning the Church of Scientology, L. Ron Hubbard or any of the organizations, individuals and entities listed in Paragraph 1 above. Plaintiff further agrees that he will maintain strict confidentiality and silence with respect to his experiences with the Church of Scientology and any knowledge or information he may have concerning the Church of Scientology, L. Ron Hubbard, or any of the organizations, individuals and entities listed in Paragraph 1 above. Plaintiff expressly understands that the non-disclosure provisions of this subparagraph shall apply, inter alia, but not be limited, to the contents or substance of his complaint on file in the action referred to in Paragraph 1 hereinabove or any documents as defined in Appendix "A" to this Agreement, including but not limited to any tapes, films, photographs, recastings, variations or copies of any such materials which concern or relate to the religion of Scientology, L. Ron Hubbard, or any of the organizations, individuals, or entities listed in Paragraph 1 above. The attorneys for Plaintiff, subject to the ethical limitations restraining them as promulgated by the state or federal regulatory associations or agencies, agree not to disclose any of the terms and conditions of the settlement negotiations, amount of the settlement, or statements made by either party during settlement conferences. Plaintiff agrees that if the terms of this paragraph are breached by him, that CSI and the other Releasees would be entitled to liquidated damages in the amount of $50,000 for each such breach. All monies received to induce or in payment for a breach of this Agreement, or any part thereof, shall be held in a constructive trust pending the outcome of any litigation over said breach. The amount of liquidated damages herein is an estimate of the damages that each party would suffer in the event this Agreement is breached. The reasonableness of the amount of such damages are hereto acknowledged by Plaintiff.

E. With exception to the items specified in Paragraph 7(L), Plaintiff agrees to return to the Church of Scientology International at the time of the consummation of this Agreement, all materials in his possession, custody or control (or within the possession, custody or control of his attorney, as well as third parties who are in possession of the described documents), of any nature, including originals and all copies or summaries of documents defined in Appendix "A" to this Agreement, including but not limited to any tapes, computer disks, films, photographs, recastings, variations or copies of any such materials which concern or relate to the religion of Scientology, L. Ron Hubbard or any of the organizations, individuals or entities listed in Paragraph 1 above, all evidence of any nature, including evidence obtained from the named defendants through discovery, acquired for the purposes of this lawsuit or any lawsuit, or acquired for any other purpose concerning any Church of Scientology, any financial or administrative materials concerning any Church of Scientology, and any materials relating personally to L. Ron Hubbard, his family, or his estate. In addition to the documents and other items to be returned to the Church of Scientology International listed above and in Appendix "A", Plaintiff agrees to return the following:

(a) All originals and copies of the manuscript for the work "Excalibur" written by L. Ron Hubbard;

(b) All originals and copies of documents commonly known as the "Affirmations" written by L. Ron Hubbard; and

(c) All documents and other items surrendered to the Court by Plaintiff and his attorneys pursuant to Judge Cole's orders of August 24, 1982 and September 4, 1982 and all documents and other items taken by the Plaintiff from either the Church of Scientology or Omar Garrison. This includes all documents and items entered into evidence or marked for identification in Church of Scientology of California v. Gerald Armstrong, Case No. C 420 153. Plaintiff and his attorney will execute a Joint Stipulation or such other documents as are necessary to obtain these documents from the Court. In the event any documents or other items are no longer in the custody or control of the Los Angeles Superior Court, Plaintiff and his counsel will assist the Church in recovering these documents as quickly as possible, including but not limited to those tapes and other documents now in the possession of the United States District Court in the case of United States v. Zolin, Case No. CV

85-0440-HLH(Tx), presently on appeal in the Ninth Circuit Court of Appeals. In the event any of these documents are currently lodged with the Court of Appeal, Plaintiff and his attorneys will cooperate in recovering those documents as soon as the Court of Appeal issues a decision on the pending appeal.

To the extent that Plaintiff does not possess or control documents within categories A-C above, Plaintiff recognizes his continuing duty to return to CSI any and all documents that fall within categories A-C above which do in the future come into his possession or control.

F. Plaintiff agrees that he will never again seek or obtain spiritual counselling or training or any other service from any Church of Scientology, Scientologist, Dianetics or Scientology auditor, Scientology minister, Mission of Scientology, Scientology organization or Scientology affiliated organization.

G. Plaintiff agrees that he will not voluntarily assist or cooperate with any person adverse to Scientology in any proceeding against any of the Scientology organizations, individuals, or entities listed in Paragraph 1 above. Plaintiff also agrees that he will not cooperate in any manner with any organizations aligned against Scientology.

H. Plaintiff agrees not to testify or otherwise participate in any other judicial, administrative or legislative proceeding adverse to Scientology or any of the Scientology Churches, individuals or entities listed in Paragraph 1 above unless compelled to do so by lawful subpoena or other lawful process. Plaintiff shall not make himself amenable to service of any such subpoena in a manner which invalidates the intent of this provision. Unless required to do so by such subpoena, Plaintiff agrees not to discuss this litigation or his experiences with and knowledge of the Church with anyone other than members of his immediate family. As provided hereinafter in Paragraph 18(d), the contents of this Agreement may not be disclosed.

I. The parties hereto agree that in the event of any future litigation between Plaintiff and any of the organizations, individuals or entities listed in Paragraph 1 above, that any past action or activity, either alleged in this lawsuit or activity similar in fact to the evidence that was developed during the course of this lawsuit, will not be used by either party against the other in any future litigation. In other words, the "slate" is wiped clean concerning past actions by any party.

J. It is expressly understood and agreed by Plaintiff that any dispute between Plaintiff and his counsel as to the proper division of the sum paid to Plaintiff by his attorney of record is between Plaintiff and his attorney of record and shall in no way affect the validity of this Mutual Release of All Claims and Settlement Agreement.

K. Plaintiff hereby acknowledges and affirms that he is not under the influence of any drug, narcotic, alcohol or other mind-influencing substance, condition or ailment such that his ability to fully understand the meaning of this Agreement and the significance thereof is adversely affected.

L. Notwithstanding the provisions of Paragraph 7(E) above, Plaintiff shall be entitled to retain any artwork created by him which concerns or relates to the religion of Scientology, L. Ron Hubbard or any of the organizations, individuals or entities listed in Paragraph 1 above provided that such artwork never be disclosed either directly or indirectly, to anyone. In the event of a disclosure in breach of this Paragraph 7(L), Plaintiff shall be subject to the liquidated damages and constructive trust provisions of Paragraph 7(D) for each such breach.

8. Plaintiff further agrees that he waives and relinquishes any right or claim arising out of the conduct of any defendant in this case to date, including any of the organizations, individuals or entities as set forth in Paragraph 1 above, and the named defendants waive and relinquish any right or claim arising out of the conduct of Plaintiff to date.

9. This Mutual Release of All Claims and Settlement Agreement contains the entire agreement between the parties hereto, and the terms of this Agreement are contractual and not a mere recital. This Agreement may be amended only by a written instrument executed by Plaintiff and CSI. The parties hereto have carefully read and understand the contents of this Mutual Release of All Claims and Settlement Agreement and sign the same of their own free will, and it is the intention of the parties to be legally bound hereby. No other prior or contemporaneous agreements, oral or written, respecting such matters, which are not specifically

incorporated herein shall be deemed to in any way exist or bind any of the parties hereto.

10. Plaintiff agrees that he will not assist or advise anyone, including individuals, partnerships, associations, corporations, or governmental agencies contemplating any claim or engaged in litigation or involved in or contemplating any activity adverse to the interests of any entity or class of persons listed above in Paragraph 1 of this Agreement.

11. The parties to this Agreement acknowledge the following:

A. That all parties enter into this Agreement freely, voluntarily, knowingly and willingly, without any threats, intimidation or pressure of any kind whatsoever and voluntarily execute this Agreement of their own free will;

B. That all parties have conducted sufficient deliberation and investigation, either personally or through other sources of their own choosing, and have obtained advice of counsel regarding the terms and conditions set forth herein, so that they may intelligently exercise their own judgment in deciding whether or not to execute this Agreement; and

C. That all parties have carefully read this Agreement and understand the contents thereof and that each reference in this Agreement to any party includes successors, assigns, principals, agents and employees thereof.

12. Each party shall bear its respective costs with respect to the negotiation and drafting of this Agreement and

all acts required by the terms hereof to be undertaken and performed by that party.

13. To the extent that this Agreement inures to the benefit of persons or entities not signatories hereto, this Agreement is hereby declared to be made for their respective benefits and uses.

14. The parties shall execute and deliver all documents and perform all further acts that may be reasonably necessary to effectuate the provisions of this Agreement.

15. This Agreement shall not be construed against the party preparing it, but shall be construed as if both parties prepared this Agreement. This Agreement shall be construed and enforced in accordance with the laws of the State of California.

16. In the event any provision hereof be unenforceable, such provision shall not affect the enforceability of any other provision hereof.

17. All references to the plural shall include the singular and all references to the singular shall include the plural. All references to gender shall include both the masculine and feminine.

18.(A) Each party warrants that they have received independent legal advice from their attorneys with respect to the advisability of making the settlement provided for herein and in executing this Agreement.

(B) The parties hereto (including any officer, agent, employee, representative or attorney of or for any party) acknowledge that they have not made any statement, representation or promise to the other party regarding any fact material to this Agreement except as expressly set forth herein. Furthermore, except as expressly stated in this Agreement, the parties in executing this Agreement do not rely upon any statement, representation or promise by the other party (or of any officer, agent, employee, representative or attorney for the other party).

(C) The persons signing this Agreement have the full right and authority to enter into this Agreement on behalf of the parties for whom they are signing.

(D) The parties hereto and their respective attorneys each agree not to disclose the contents of this executed Agreement. Nothing herein shall be construed to prevent any party hereto or his respective attorney from stating that this civil action has been settled in its entirety.

(E) The parties further agree to forbear and refrain from doing any act or exercising any right, whether existing now or in the future, which act or exercise is inconsistent with this Agreement.

19. Plaintiff has been fully advised by his counsel as to the contents of this document and each provision hereof. Plaintiff hereby authorizes and directs his counsel to dismiss with prejudice his claims now pending in the action entitled Gerald Armstrong v. Church of Scientology of California, Los Angeles Superior Court, Case No. 420 153.

20. Notwithstanding the dismissal of the lawsuit pursuant to Paragraph 4 of this Agreement, the parties hereto agree that the Los Angeles Superior Court shall retain

jurisdiction to enforce the terms of this Agreement. This Agreement may be enforced by any legal or equitable remedy, including but not limited to injunctive relief or declaratory judgment where appropriate. In the event any party to this Agreement institutes any action to preserve, to protect or to enforce any right or benefit created hereunder, the prevailing party in any such action shall be entitled to the costs of suit and reasonable attorney's fees.

21. This Agreement may be executed in two or more counterparts, each of which shall be deemed to be a duplicate original, but all of which, together, shall constitute one and the same instrument.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement, on the date opposite their names.

Dated: December 6, 1986

GERALD ARMSTRONG

Witness

Witness

Dated: 12/6/86

APPROVED AS TO FORM AND CONTENT:

M. J. Flynn

MICHAEL J. FLYNN
Attorney for
GERALD ARMSTRONG

Dated: December 11, 1986

for
CHURCH OF SCIENTOLOGY
INTERNATIONAL

APPENDIX A

1. As used herein, the term "document" or "documents" include but are not limited to all originals, file copies and copies not identical to the original, no matter how prepared, of all writings, papers, notes, records, books and other tangible things including, by way of example and not of limitation, the following:

a. Memoranda, notes, calendars, appointment books, shorthand or stenographer's notebooks, correspondence, letters and telegrams, whether received, sent, filed or maintained internally;

b. Drafts and notes, whether typed, penciled or otherwise, whether or not used;

c. Minutes, reports and summaries of meetings;

d. Contracts, agreements, understandings, commitments, proposals and other business dealings;

e. Recordings, transcriptions and memoranda or notes made of any telephone or face-to-face oral conversations between or among persons;

f. Dictated tapes or other sound recordings;

g. Computer printouts or reports and the applicable program or programs therefor;

h. Tapes, cards or any other means by which data are stored or preserved electrically, electronically, magnetically or mechanically, and the applicable program or program therefor (from which plaintiff may reproduce or cause to be reproduced such data in written form);

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i. Pictures, drawings, photographs, charts or other graphic representations;

j. Checks, bills, notes, receipts, or other evidence of payment;

k. Ledgers, journals, financial statements, accounting records, operating statements, balance sheets and statements of account.

DEFENDANT ALSO HAS NOT RAISED A TRIABLE ISSUE REGARDING DURESS. DEFENDANT'S OWN DECLARATION SHOWS HE DID NOT EXECUTE THE AGREEMENT UNDER DURESS IN THAT IT SHOWS THAT HE CAREFULLY WEIGHED HIS OPTIONS. (SEE D'S EX. 1, ¶10.) IT CERTAINLY DOES NOT SHOW THAT HE DID SOMETHING AGAINST HIS WILL OR HAD "NO REASONABLE ALTERNATIVE TO SUCCUMBING." (SEE *IN RE MARRIAGE OF BALTINS* (1989) 212 CAL.APP.3D 66, 84.) IN ADDITION, DEFENDANT IS RELYING ON THE CONDUCT OF A THIRD PARTY (FLYNN) TO ESTABLISH DURESS, YET HE SETS FORTH NO FACT OR EVIDENCE IN HIS SEPARATE STATEMENT SHOWING THAT PLAINTIFF HAD REASON TO KNOW OF THE DURESS. (SEE *LEEPER* V. *BELTRAMI* (1959) 53 CAL.2D 195, 206.)

AS TO THE FOURTH CAUSE OF ACTION, CONTRARY TO DEFENDANT'S ARGUMENT, THE SUBJECT DECLARATION DOES MORE THAN MERELY AUTHENTICATE DOCUMENTS. (SEE P'S EX. 1(A)(11), ¶¶1-3.) THE COURT FINDS THAT THE DECLARATION CONSTITUTES A DISCLOSURE OF DEFENDANT'S "EXPERIENCES WITH" PLAINTIFF OR "KNOWLEDGE OR INFORMATION" CONCERNING PLAINTIFF AND HUBBARD. (SEE P'S EX. 1B, ¶7D.) DEFENDANT FAILS TO RAISE A TRIABLE ISSUE REGARDING OBSTRUCTION OF JUSTICE/ SUPPRESSION OF EVIDENCE. THE SETTLEMENT AGREEMENT EXPRESSLY DOES NOT PROHIBIT DEFENDANT FROM DISCLOSING INFORMATION PURSUANT TO SUBPOENA OR OTHER LEGAL PROCESS. (SEE P'S EX. 1B, ¶7H; CONTRAST WITH PEN. CODE, §§ 136.1 AND 138, *WILLIAMSON* V. *SUPERIOR COURT* (1978) 21 CAL.3D 829, *PEOPLE* V. *PIC'L* (1982) 31 CAL.3D 731.) NOR IS PLAINTIFF IN THIS CAUSE OF ACTION SEEKING TO PROHIBIT DISCLOSURE TO GOVERNMENT AGENCIES CONDUCTING INVESTIGATIONS PURSUANT TO STATUTORY OBLIGATIONS. (CONTRAST WITH *MARY R.* V. *B. & R. CORP.* (1983) 149 CAL.APP.3D 308 AND *ALLEN* V. *JORDANOS' INC.* (1975) 52 CAL.APP.3D 160.) EVEN IF A PORTION OF THE AGREEMENT COULD BE CONSTRUED TO SO PROHIBIT (SEE, E.G., ¶10), PLAINTIFF IS NOT RELYING ON THAT SECTION. NOR HAS DEFENDANT SHOWN THAT THE PROVISION IS SO SUBSTANTIAL AS TO RENDER THE ENTIRE CONTRACT ILLEGAL. (CONTRAST WITH *ALLEN, SUPRA*, 52 CAL.APP.3D AT 166.

EXHIBIT C

SUPERIOR COURT, MARIN COUNTY, CALIFORNIA
LAW & MOTION, CIVIL CALENDAR
RULINGS

TIME: 9:00 **DATE:** 1/27/95 **DEPT:** 1
JUDGE: GARY W. THOMAS **REPORTER:** E. PASSARIS **CLERK:** J. BENASSINI
CASE NO: 157680 **TITLE OF ACTION:** CHURCH OF SCIENTOLOGY V. GERALD ARMSTRONG

AS TO THE SIXTH CAUSE OF ACTION, DEFENDANT FAILS TO RAISE A TRIABLE ISSUE REGARDING THE CNN INTERVIEW. DEFENDANT ADMITTED IN HIS DEPOSITION THAT HIS CONVERSATION WITH CNN INVOLVED KNOWLEDGE HE HAD GAINED BECAUSE OF HIS YEARS OF EXPERIENCE WITH THE ORGANIZATION (P'S EX. 1A AT 344:1-4), THUS REFUTING HIS ARGUMENTS THAT HIS STATEMENT WAS BASED ON KNOWLEDGE ACQUIRED AFTER THE SETTLEMENT AGREEMENT AND THAT HIS INTERVIEW WAS DIRECTLY RELATED TO THE INSTANT LITIGATION. IN ADDITION, PLAINTIFF SET FORTH NO FACTS OR EVIDENCE IN HIS SEPARATE STATEMENT SHOWING THAT HE COULD DISCLOSE INFORMATION ACQUIRED AFTER EXECUTION OF THE SETTLEMENT AGREEMENT OR THAT HE COULD MAKE SUCH STATEMENTS IN THE CONTEXT OF FUTURE LITIGATION. FINALLY, THERE IS NOTHING IN THE STATEMENT WHICH TIES IT TO EITHER OF THE ARGUMENTS RAISED BY DEFENDANT. DEFENDANT ALSO FAILS TO RAISE A TRIABLE ISSUE REGARDING *THE AMERICAN LAWYER* INTERVIEW. DEFENDANT'S CLAIM THAT HE ONLY DISCUSSED THE INSTANT LITIGATION IS REFUTED BY HIS OWN ADMISSION THAT HE DISCUSSED "THE PLIGHT OF THE ORGANIZATION [AND] WHAT IT WOULD TAKE TO END ITS LEGAL TROUBLES." (D'S EX. 1D AT 352:15-19.) DEFENDANT'S CLAIM THAT HIS DISCUSSION INVOLVED "NOTHING MORE THAN WHAT JUDGE BRECKENRIDGE STATED IN HIS DECISION IN *ARMSTRONG I*" IS REFUTED BY HIS ADMISSION THAT HE DID NOT RECALL DISCUSSING THE BRECKENRIDGE OPINION WITH THE REPORTER. (D'S EX. 1D AT 358:20-23.) FURTHER, DEFENDANT POINTS TO NOTHING IN JUDGE BRECKENRIDGE'S OPINION WHICH COINCIDES TO THOSE MATTERS DISCUSSED BY DEFENDANT.

AS TO THE ELEVENTH CAUSE OF ACTION, PLAINTIFF HAS NOT SHOWN THAT DEFENDANT VIOLATED PARAGRAPH 7D OF THE SETTLEMENT AGREEMENT. THE DECLARATION RELIED ON BY PLAINTIFF (P'S EX. 1(A)(8)) DOES NOT DISCLOSE DEFENDANTS "EXPERIENCES WITH THE CHURCH OF SCIENTOLOGY [OR] ANY KNOWLEDGE OR INFORMATION HE MAY HAVE CONCERNING THE CHURCH OF SCIENTOLOGY..."

SUPERIOR COURT, MARIN COUNTY, CALIFORNIA
LAW & MOTION, CIVIL CALENDAR
RULINGS

PAGE: 4-A

TIME: 9:00 **DATE:** 1/27/95 **DEPT:** 1

JUDGE: GARY W. THOMAS **REPORTER:** E. PASSARIS **CLERK:** J. BENASSINI

CASE NO: 157680 **TITLE OF ACTION:** CHURCH OF SCIENTOLOGY V. GERALD ARMSTRONG

DEFENDANT ARMSTRONG FILED A SUPPLEMENTAL DECLARATION AND EVIDENCE SIX DAYS LATE. THE COURT DID NOT PERMIT SAME. THE PLAINTIFF'S MOTION TO STRIKE THE SUPPLEMENTAL PAPERS FROM THE FILE IS GRANTED. PLAINTIFF'S REQUEST FOR SANCTIONS IS GRANTED. DEFENDANTS KNEW THE LATENESS OF THE FILING, SOME SIX DAYS. THERE WAS AMPLE TIME TO SEEK THE COURT'S PERMISSION FOR A LATE FILING. PERMISSION WAS NOT SOUGHT. SANCTIONS REQUESTED BY PLAINTIFF PURSUANT TO SECTION 437C(i) ARE GRANTED IN THE AMOUNT OF $[illegible]00, AS THE COURT FINDS THIS SIX-DAYS LATE FILING TO BE IN BAD FAITH.

FILED

OCT 17 1995

HOWARD HANSON
MARIN COUNTY CLERK
by J. Steele, Deputy

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Attorneys for Plaintiff
CHURCH OF SCIENTOLOGY
INTERNATIONAL

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF MARIN

CHURCH OF SCIENTOLOGY INTERNATIONAL, a California not-for-profit religious corporation, Plaintiff, vs. GERALD ARMSTRONG; DOES 1 through 25, inclusive, Defendants.	CASE NO. BC 157680 [PROPOSED] ORDER OF SUMMARY JUDGMENT AS TO THE THIRTEENTH, SIXTEENTH, SEVENTEENTH, AND NINETEENTH CAUSES OF ACTION DATE: October 6, 1995 TIME: 9:00 a.m. DEPT: 1 TRIAL DATE: Vacated

This matter came on for hearing on October 6, 1995, on motion of plaintiff Church of Scientology International ("the Church") for Summary Adjudication of the Thirteenth, Sixteenth, Seventeenth, and Nineteenth Causes of Action of the Second Amended Complaint. Plaintiff Church of Scientology International

EXHIBIT D

appeared by its attorneys, Andrew H. Wilson of Wilson, Ryan & Campilongo and Laurie J. Bartilson of Bowles & Moxon, defendant Armstrong appeared by his attorney, Ford Greene. Having read and considered the moving and opposing papers, and the evidence and arguments presented therein and at the hearing, and good cause appearing:

IT IS ORDERED:

1. The Motion of Plaintiff for Summary Adjudication of Issues as to the Thirteenth, Sixteenth, Seventeenth, and Nineteenth Causes of Action of the Second Amended Complaint is GRANTED in favor of Plaintiff, Church of Scientology International, and against Defendant, Gerald Armstrong, in the amount of $200,000.

Plaintiff has met its burden of showing that defendant breached the settlement agreement and that it is entitled to liquidated damages of $50,000 for each breach. Defendant has failed to raise a triable issue as to any of the causes of action, as follows:

INVALIDITY OF LIQUIDATED DAMAGES PROVISION: Defendant's evidence regarding his attorneys' failure to represent his interests (see Facts 43 and 68) is hearsay and/or not based on personal knowledge. The opinion of defendant's attorney as to the validity of the provision (see, e.g., Facts 52-54, 57-60) is irrelevant and hearsay. The fact that two other clients signed a settlement agreement containing the same liquidated damages amount (see Facts 55-56 and 63-64) does not raise an inference that the provision was unreasonable. Defendant's evidence is insufficient to raise a reasonable inference of unequal bargaining power (no personal knowledge shown that plaintiff, as opposed to Flynn, positioned defendant as a "deal breaker"; Flynn's statements hearsay; no personal knowledge shown of plaintiff's wealth; wealth alone does not raise inference of unequal bargaining power since no showing defendant desperate for money and had to accept on plaintiff's terms). Defendant's evidence does not raise an inference that plaintiff's calculation is "unfathomable" (Fourteenth Cause of Action seeks $50,000 for each of 18 letters; Nineteenth Cause of Action is based only on declarations, not on other contacts between defendant and attorney/other clients). Defendant fails to establish how he knows plaintiff had not been injured by his statements at the time of settlement.

DURESS: Flynn's statements to defendant are hearsay. (See, e.g., D's Facts 1C and 1D.) Further, defendant has not shown that plaintiff was aware of Flynn's purported duress of defendant. (See *Leeper v. Beltrami* (1959) 53 Cal.2d 195, 206.) Contrary to defendant's statement about duress, "careful weighing of options" is completely inconsistent with an absence "of the free exercise of his will power" or his having "no reasonable alternative to succumbing." (See *Philippine Expert & Foreign Loan Guarantee Corp. v. Chuidian* (1990) 218 Cal.App.3D 1058, 1078; *In Re Marriage of Baltins* (1989) 212 Cal.App.3D 66, 84.)

FRAUD: Flynn's statements to defendant (see Fact 78) are hearsay. The Court finds that the portions of the agreement cited by defendant (see Facts 79 and 80) do not establish a mutual confidentiality requirement. Paragraph 7(I) only prohibits the parties from disclosing information in litigation between the parties; paragraph 18(D) only prohibits disclosure of the terms of the settlement; defendant has not shown that plaintiff did either of those things. Further, "[s]omething more than nonperformance is required to prove the defendant's intention not to perform his promise." (*Tenzer v. Superscope, Inc.* (1985) 39 Cal.3d 18, 30-31).

NO SPECIFIC PERFORMANCE, BREACH OF EXPRESS AND IMPLIED COVENANT: Defendant relies on the purported mutuality requirement, which he has failed to establish.

FIRST AMENDMENT: First Amendment rights may be waived by contract. (See *ITT Telecom Products Corp. v. Dooley* (1989) 214 Cal.App.3D 307, 319.)

2. The plaintiff has asked that the exhibits which were previously ordered sealed be stricken as they are trade secrets, irrelevant to this motion. This request is GRANTED. They are not relevant. Further, they were filed by Mr. Armstrong *in pro per* when he is, in fact, represented by counsel.

Dated: October ___, 1995

OCT 17 1995

GARY W. THOMAS

GARY W. THOMAS
Judge of the Superior Court

Approved as to form:

Ford Greene
Attorney for Defendants Gerald
Armstrong and the Gerald Armstrong
Corporation

SUPERIOR COURT, MARIN COUNTY, CALIFORNIA
LAW & MOTION, CIVIL CALENDAR
RULINGS

TIME: 9:00 DATE: 1/27/95 DEPT: 1

JUDGE: GARY W. THOMAS REPORTER: E. PASSARIS CLERK: J. BENASSINI

CASE NO: 157680 TITLE OF ACTION: CHURCH OF SCIENTOLOGY V. GERALD ARMSTRONG

THE MOTION OF PLAINTIFF FOR SUMMARY ADJUDICATION OF ISSUES IS GRANTED AS TO THE FOURTH AND SIXTH CAUSES OF ACTION AND DENIED AS TO THE ELEVENTH CAUSE OF ACTION.

AS TO ALL CAUSES OF ACTION, DEFENDANT FAILS TO RAISE A TRIABLE ISSUE AS TO WHETHER THE LIQUIDATED DAMAGES PROVISION IS INVALID. DEFENDANT RELIES ON THE LAW AS IT EXISTED PRIOR TO JULY 1, 1978. (SEE *UNITED SAV. & LOAN ASSN. V. REEDER DEV. CORP.* (1976) 57 CAL.APP.3D 282 AND EARLIER VERSIONS OF CIV. CODE, §§ 1670 AND 1671.) THE LAW NOW PRESUMES THAT LIQUIDATED DAMAGES PROVISIONS ARE "VALID UNLESS THE PARTY SEEKING TO INVALIDATE THE PROVISION ESTABLISHES THAT THE PROVISION WAS UNREASONABLE UNDER THE CIRCUMSTANCES EXISTING AT THE TIME THE CONTRACT WAS MADE." (CIV. CODE, § 1671, SUBD. (b).) DEFENDANT'S EVIDENCE IS NOT SUFFICIENT TO RAISE A TRIABLE ISSUE IN THAT REGARD. ALTHOUGH DEFENDANT STATES IN HIS DECLARATION THAT HE WAS NOT INVOLVED IN NEGOTIATING THE PROVISION (SEE D'S EX. 1, ¶12), HE GOES ON TO STATE THAT HE DISCUSSED THE PROVISION WITH TWO ATTORNEYS BEFORE SIGNING THE AGREEMENT. (*ID.*, ¶¶12-13.) THUS, HE CLEARLY KNEW OF THE PROVISION YET CHOSE TO SIGN IT. HE HAS NOT SHOWN THAT HE HAD UNEQUAL BARGAINING POWER OR THAT HE MADE ANY EFFORTS TO BARGAIN OR NEGOTIATE WITH RESPECT TO THE PROVISION. (SEE *H. S. PERLIN CO.* V. *MORSE SIGNAL DEVICES* (1989) 209 CAL.APP.3D 1289.) DEFENDANT NEXT STATES THAT PLAINTIFF'S ACTUAL DAMAGES ARE ZERO. (D'S EX. 1, ¶12.) HOWEVER, "THE AMOUNT OF DAMAGES ACTUALLY SUFFERED HAS NO BEARING ON THE VALIDITY OF THE LIQUIDATED DAMAGES PROVISION..." (SEE LAW REVISION COMMISSION COMMENT TO § 1671.) FINALLY, DEFENDANT POINTS TO THE FACT THAT OTHER SETTLEMENT AGREEMENTS CONTAIN A $10,000 LIQUIDATED DAMAGES PROVISION. (SEE D'S EXS. 2C AND 2D.) THIS ALONE IS NOT SUFFICIENT TO RAISE A TRIABLE ISSUE IN THAT DEFENDANT HAS NOT SHOWN THAT CIRCUMSTANCES DID NOT CHANGE BETWEEN 12/86 AND 4/87 AND THAT THOSE SETTLING PARTIES STAND IN THE SAME OR SIMILAR POSITION TO DEFENDANT (I.E., THAT THEY WERE AS HIGH UP IN THE ORGANIZATION AND COULD CAUSE AS MUCH DAMAGE BY SPEAKING OUT AGAINST PLAINTIFF OR THAT THEY HAVE/HAD ACCESS TO AS MUCH INFORMATION AS DEFENDANT).

9594

FILED
OCT 17 1995
HOWARD HANSON
MARIN COUNTY CLERK
by J. Steele, Deputy

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Attorneys for Plaintiff
CHURCH OF SCIENTOLOGY
INTERNATIONAL

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF MARIN

CHURCH OF SCIENTOLOGY INTERNATIONAL, a California not-for-profit religious corporation,

Plaintiff,

vs.

GERALD ARMSTRONG; DOES 1 through 25, inclusive,

Defendants.

CASE NO. BC 157680

~~[PROPOSED]~~ GWT. 10/17/95

ORDER OF PERMANENT INJUNCTION

DATE: October 6, 1995
TIME: 9:00 a.m.
DEPT: 1

TRIAL DATE: Vacated

This matter came on for hearing on October 6, 1995, on motion of plaintiff Church of Scientology International ("the Church") for Summary Adjudication of the Twentieth Cause of Action of the Second Amended Complaint. Plaintiff Church of Scientology International appeared by its attorneys, Andrew H. Wilson of Wilson, Ryan & Campilongo and Laurie J. Bartilson of Bowles & Moxon,

EXHIBIT E

defendant Armstrong appeared by his attorney, Ford Greene. Having read and considered the moving and opposing papers, and the evidence and arguments presented therein and at the hearing, and good cause appearing:

IT IS ORDERED:

The Church's motion for summary adjudication of the twentieth cause of action of the Second Amended Complaint is GRANTED. The Court finds that there is no triable issue of material fact as to any of the following:

1. Plaintiff and defendant freely and voluntarily entered into a Mutual Release of All Claims and Settlement Agreement ("Agreement") in December, 1986.

2. Plaintiff performed all of its obligations pursuant to the Agreement.

3. Defendant Armstrong received substantial consideration for the promises which he made in the Agreement.

4. Since 1990, defendant Armstrong has repeatedly breached paragraphs 7(D), 7(E), 7(H), 7(G), 10, 18(D) and 20 of the Agreement.

5. Between 1991 and the present, Armstrong breached paragraphs 7(G), 7(H) and 10 of the Agreement by providing voluntary assistance, exclusive of testimony made pursuant to a valid subpoena, to the following private individuals, each of whom was pressing a claim or engaged in litigation with plaintiff and/or one or more of the designated beneficiaries of the Agreement:

- Vicki and Richard Aznaran, anti-Scientology litigants in the case of Vicki Aznaran, et al. v. Church of Scientology International, United States District Court for the Central District of California, Case No. CV 88-1786 (JMI) [Sep.St.Nos. 11-16];
- Joseph A. Yanny, anti-Scientology litigant in the case of Religious Technology Center et al. v. Joseph Yanny, et al., Los Angeles Superior Court No. C 690211 and Religious Technology Center et al. v. Joseph Yanny, et al., Los Angeles Superior Court No. BC 033035 [Sep.St.Nos. 17-

20];

- Malcolm Nothling, anti-Scientology litigant in the matter between Malcolm Nothling and the Church of Scientology in South Africa, Adi Codd, Diane Kemp, Glen Rollins; Supreme Court of South Africa (Witwatzbsrand Local Division) Case No. 19221/88. [Sep.St.Nos. 21-24];
- Reader's Digest Corporation, anti-Scientology litigant in the case of Church of Scientology of Lausanne vs. Kiosk AG, Basel, Switzerland [Sep.St.Nos. 25-26];
- Richard Behar, anti-Scientology litigant in the case of Church of Scientology International v. Time Warner, Inc.; Time Inc. Magazine Company and Richard Behar, United States District Court, Southern District of New York, Case No. 92 Civ. 3024 PKL [Sep.St.Nos. 27-28];
- Steven Hunziker, anti-Scientology litigant in the case of Hunziker v. Applied Materials, Inc., Santa Clara Superior Court Case No. 692629 [Sep.St.Nos. 29-33];
- David Mayo, anti-Scientology litigant in the case of Religious Technology Center v. Robin Scott, et al., United States District Court for the Central District of California, Case No. 85-711 [Sep.St.Nos. 34-35];
- Cult Awareness Network, anti-Scientology litigant in the case of Cult Awareness Network v. Church of Scientology International, et al., Circuit Court of Cook County, Illinois, No. 94L804 [Sep.St.Nos. 38-39];
- Lawrence Wollersheim, anti-Scientology litigant in the cases of Lawrence Wollersheim v. Church of Scientolouy of California, Los Angeles Superior Court Number C332027 and Church of Scientology of California v. Lawrence Wollersheim, Los Angeles Superior Court Number BC074815 [Sep.St.Nos. 40-42];
- Ronald Lawley, anti-Scientology litigant in the cases of Religious Technology Center, et al. vs. Robin Scott, et al., U.S. District Court, Central

District of California, Case No. 85-711 MRP(Bx); Matter Between Church of Scientology Advanced Organization Saint Hill Europe and Africa, and Robin Scott, Ron Lawley, Morag Bellmaine, Stephen Bisbey in the High Court of Justice Queen's Bench Division, Case 1984 S No. 1675; and Matter Between Church of Scientology Religious Education College Inc., and Nancy Carter, Ron Lawley, Steven Bisbey, in the High Court of Justice Queen's Bench Division, Case 1986 C No. 12230 [Sep.St.Nos. 43-44];

- Uwe Geertz and Steven Fishman, anti-Scientology litigants in the case of Church of Scientology International v. Steven Fishman, et al., United States District Court for the Central District of California Number 91-6426 HLH(Tx) [Sep.St.Nos. 45-46];
- Tilly Good, a claimant against the Church of Scientology, Mission of Sacramento Valley [Sep.St.Nos. 36-37];
- Denise Cantin, a claimant against the Church of Scientology of Orange County; Church of Scientology of Boston; and Church of Scientology, Flag Service Organization [Sep.St.Nos. 36-37]; and
- Ed Roberts, a claimant against the Church of Scientology of Stevens Creek [Sep.St.Nos. 36-37].

6. Between 1992 and the present, Armstrong breached paragraph 7(D) of the Agreement by contacting media representatives, granting interviews and attempting to assist media representatives in the preparation for publication or broadcast magazine articles, newspaper articles, books, radio and television programs, about or concerning the Church and/or other persons and entities referred to in paragraph 1 of the Agreement. These media representatives included:

- Cable Network News: reporter Don Knapp, in March, 1992 [Sep.St.Nos. 47-48];
- American Lawyer Magazine: reporter Bill Horne, in March, 1992

[Sep.St.No. 49];

- Los Angeles Times: reporter Bob Welkos, in May, 1992; and reporter Joel Sappell, in June, 1993 [Sep.St.Nos. 50-51];
- CAN Video Interview, with anti-Scientologists "Spanky" Taylor and Jerry Whitfield, in November, 1992 [Sep.St.No. 52];
- KFAX Radio: interview planned but prevented in April, 1993 [Sep.St.No. 53];
- Newsweek Magazine: reporter Charles Fleming, in June, 1993 and August, 1993 [Sep.St.No. 54-56];
- Daily Journal: reporter Mike Tipping, in June, 1993 [Sep.St.No. 57];
- Time Magazine: reporter Richard Behar, in March, 1992 and in June, 1993 [Sep.St.Nos. 58-59];
- San Francisco Recorder: reporter Jennifer Cohen, in August, 1993 [Sep.St.No. 60];
- E! Entertainment Network: reporter Greg Agnew, in August, 1993 [Sep.St.No. 61];
- WORD Radio: Pittsburgh, Pennsylvania, interviewed in the fall of 1993 [Sep.St.No. 62];
- St. Petersburg Times: St. Petersburg, Florida, reporter Wayne Garcia, in the fall of 1993 [Sep.St.No. 63];
- Premiere Magazine: letter to the editor, in October, 1993 [Sep.St.No. 64];
- Mirror-Group Newspapers: United Kingdom, in May, 1994 [Sep.St.No. 65];
- Gauntlet Magazine: New York, New York, reporter Rick Cusick in June, 1994 [Sep.St.No. 66];
- Pacific Sun Newspaper: reporter Rick Sine, in June and July, 1994 [Sep.St.No. 67];

- Disney Cable: reporter Marsha Nix, in August, 1994 [Sep.St.No. 68]; and

- Tom Voltz: Swiss author writing a book about Scientology, in October, 1994 [Sep.St.No. 69].

7. Between 1992 and the present, Armstrong breached paragraph 7(D) of the Agreement by preparing and distributing at least three manuscripts concerning his claimed experiences in and with Scientology, including a treatment for a screenplay which he intends to turn into a film [Sep.St.Nos.70-71].

8. Between 1991 and the present, Armstrong further breached paragraph 7(D) of the Agreement by disclosing his claimed experiences in or with Scientology to each of the following persons or groups, not previously identified: Robert Lobsinger [Sep.St.No. 72]; the New York Times [Sep.St.No. 73]; Toby Plevin, Stuart Culter, Anthony Laing, Kent Burtner, and Margaret Singer [Sep.St.No. 74]; Priscilla Coates [Sep.St.No. 75]; Omar Garrison [Sep.St.No. 76]; Vaughn and Stacy Young [Sep.St.No. 77]; a Stanford University psychology class [Sep.St.No. 78]; attendees at the 1992 Cult Awareness Network Convention [Sep.St.No. 79]; and Hana Whitfield [Sep.St.No. 80].

9. Defendant Armstrong has reiterated numerous times that he intends to continuing breaching the Agreement unless he is ordered by the Court to cease and desist [Sep.St.Nos. 87-97].

10. Plaintiff's legal remedies are inadequate insofar as the scope of the relief ordered below is concerned. Tamarind Lithography Workshop, Inc. v. Sanders (1983) 143 Cal.App.3d 571, 577-578, 193 Cal.Rptr. 409, 413.

Accordingly, the Court finds that entry of a permanent injunction in this action is necessary in this action because pecuniary compensation could not afford the Church adequate relief, and the restraint is necessary in order to prevent a multiplicity of actions for breach of contract. Civil Code § 3422(1),(3). A ORDER of injunction is therefore entered as follows:

Defendant Gerald Armstrong, his agents, employees, and persons acting in concert or conspiracy with him are restrained and enjoined from doing directly or indirectly any of the following:

1. Voluntarily assisting any person (not a governmental organ or entity) intending to make, intending to press, intending to arbitrate, or intending to litigate a claim, regarding such claim or regarding pressing, arbitrating, or litigating it, against any of the following persons or entities:

- The Church of Scientology International, its officers, directors, agents, representatives, employees, volunteers, successors, assigns and legal counsel;
- The Church of Scientology of California, its officers, directors, agents, representatives, employees, volunteers, successors, assigns and legal counsel;
- Religious Technology Center, its officers, directors, agents, representatives, employees, volunteers, successors, assigns and legal counsel;
- The Church of Spiritual Technology, its officers, directors, agents, representatives, employees, volunteers, successors, assigns and legal counsel;
- All Scientology and Scientology affiliated Churches, organizations and entities, and their officers, directors, agents, representatives, employees, volunteers, successors, assigns and legal counsel;
- Author Services, Inc., its officers, directors, agents, representatives, employees, volunteers, successors, assigns and legal counsel;
- The Estate of L. Ron Hubbard, its executor, beneficiaries, heirs, representatives, and legal counsel; and/or
- Mary Sue Hubbard;

(Hereinafter referred to collectively as "the Beneficiaries");

2. Voluntarily assisting any person (not a governmental organ or entity) defending a claim, intending to defend a claim, intending to defend an arbitration, or intending to defend any claim being pressed, made, arbitrated or litigated by any of the Beneficiaries, regarding such claim or regarding defending, arbitrating, or litigating against it;

3. Voluntarily assisting any person (not a governmental organ or entity) arbitrating or litigating adversely to any of the Beneficiaries;

4. Facilitating in any manner the creation, publication, broadcast, writing, filming audio recording, video recording, electronic recording or reproduction of any kind of any book, article, film, television program, radio program, treatment, declaration, screenplay or other literary, artistic or documentary work of any kind which discusses, refers to or mentions Scientology, the Church, and/or any of the Beneficiaries;

5. Discussing with anyone, not a member of Armstrong's immediate family or his attorney, Scientology, the Church, and/or any of the Beneficiaries;

In addition, it is ORDERED that, within 20 days of the issuance of this Order, Armstrong shall:

1. Return to the Church any documents which he now has in his possession, custody or control which discuss or concern Scientology, the Church and/or any person or entity referred to in paragraph 1 of the "Mutual Release of All Claims and Settlement Agreement" of December, 1986, other than documents which have been filed in this litigation.

It is further ORDERED that during the pendency of this litigation, documents which have been filed in this litigation may be retained by Armstrong's counsel. Those documents are to remain sealed, in the possession of Mr. Greene or any successor counsel, and may not be distributed to third parties. At the conclusion of the instant litigation, it is ORDERED that all documents from this case in counsel's possession which do not comprise counsel's work product will be delivered to counsel for plaintiff. Counsel's work product may be retained by Armstrong's counsel.

DATED: __________, 1995

OCT 17 1995

GARY W. THOMAS

THE HONORABLE GARY W. THOMAS
SUPERIOR COURT JUDGE

SCI02-003
pldgs.

9603

SUPERIOR COURT, MARIN COUNTY, CALIFORNIA
LAW & MOTION, CIVIL CALENDAR
RULINGS

TIME: 9:00 **DATE:** DECEMBER 1, 1995 **DEPT:** 1
JUDGE: GARY W. THOMAS **REPORTER:** E. PASSARIS **CLERK:** C. SOTELO
CASE NO: 157680 **TITLE OF ACTION:** CHURCH OF SCIENTOLOGY V. ARMSTRONG

ARGUMENT 4: "THE SEALING ORDER IS UNINTELLIGIBLE AND UNENFORCEABLE" - AGAIN, THIS IS NOT "NEW OR DIFFERENT" SINCE PLAINTIFF SOUGHT THIS RELIEF WHEN IT SOUGHT THE PERMANENT INJUNCTION.

ARGUMENT 5: "TO THE EXTENT THE AGREEMENT IS IN RESTRAINT OF TRADE, IT IS INVALID" - AGAIN, THIS IS NOT "NEW OR DIFFERENT" SINCE THE SAME HELD TRUE AT THE TIME PLAINTIFF SOUGHT THE PERMANENT INJUNCTION. IN ANY EVENT, THE INJUNCTION DOES NOT PRECLUDE DEFENDANT FROM WORKING FOR HIS ATTORNEY AS A PARALEGAL. DEFENDANT CITES NO AUTHORITY THAT THE INJUNCTION IS INVALID WHERE IS ONLY LIMITS THE CASES UPON WHICH HE CAN WORK.

ARGUMENT 6: "THE HELLER AND LONG DECLARATIONS RAISE TRIABLE ISSUES REGARDING THE DEFENSE OF UNCLEAN HANDS" - DEFENDANT POINTS ONLY TO FACTS AND EVIDENCE SET FORTH IN HIS PREVIOUS SEPARATE STATEMENT, THUS THERE IS NOTHING "NEW OR DIFFERENT" TO SUPPORT THIS ARGUMENT.

PLAINTIFF'S MOTION

PLAINTIFF'S MOTION FOR SUMMARY ADJUDICATION IS DENIED; IN ALL OTHER RESPECTS, THE MOTION IS GRANTED. AS TO THE FIRST CAUSE OF ACTION OF DEFENDANT'S CROSS-COMPLAINT, PLAINTIFF HAS FAILED TO MEET ITS BURDEN OF SHOWING THAT THE COURT HAS DETERMINED THE ENFORCEABILITY OF PARAGRAPHS 7I AND 18E OF THE SETTLEMENT AGREEMENT. THE MOTIONS DIRECTED AT THE FOURTH, SIXTH, THIRTEENTH, SIXTEENTH, SEVENTEENTH AND NINETEENTH CAUSES OF ACTION ONLY INVOLVED PARAGRAPH 7D OF THE SETTLEMENT AGREEMENT. (SEE P'S EXS. RJN C AND D.) DEFENDANT DOES NOT DISPUTE THAT "PARAGRAPHS 4A AND 4B CONCERN AN APPEAL WHICH HAS ALREADY BECOME FINAL, AND AS TO WHICH NO RIGHTS, DUTIES OR OBLIGATIONS COULD BE ENFORCED IN THE FUTURE." (SEE P'S FACT 3.) THE ORDER OF PERMANENT INJUNCTION DID NOT FIND VIOLATIONS OF PARAGRAPHS 7I AND 18E. (SEE P'S EX. RJN E, P. 2, ¶4.)

EXHIBIT F

9604

L. BARTILSON 213 953-3351 F. GREENE 454-5318 A. WILSON 954-0938

SUPERIOR COURT, MARIN COUNTY, CALIFORNIA
LAW & MOTION, CIVIL CALENDAR
RULINGS

TIME: 9:00
DATE: DECEMBER 1, 1995
DEPT: 1
JUDGE: GARY W. THOMAS
REPORTER: E. PASSARIS
CLERK: C. SOTELO
CASE NO: 157680
TITLE OF ACTION: CHURCH OF SCIENTOLOGY V. ARMSTRONG

DEFENDANT'S MOTION

THE MOTION OF DEFENDANT GERALD ARMSTRONG FOR RECONSIDERATION IS DENIED. AS WILL BE SHOWN, NONE OF DEFENDANT'S ARGUMENTS MEET THE REQUIREMENTS OF CODE OF CIVIL PROCEDURE SECTION 1008, SUBDIVISION (a).

ARGUMENT 1: "THE COURT MUST CONSIDER THE HELLER DECLARATION WHICH RAISES TRIABLE ISSUES AS TO WHETHER THE AGREEMENT WAS INTEGRATED AND AS TO THE PARTIES INTENT THAT THE GAG PROVISIONS WERE RECIPROCAL" - IT IS NOT SUFFICIENT FOR PURPOSES OF A RECONSIDERATION MOTION TO SIMPLY ARGUE THAT THE COURT MISINTERPRETED THE LAW. (*GILBERD* V. *AC TRANSIT* (1995) 32 CAL.APP.4TH 1494, 1500.) DEFENDANT'S PURPORTED "NEW OR DIFFERENT" EVIDENCE IS NOT "NEW OR DIFFERENT" IN THAT IT IS MERELY CUMULATIVE OF ALL OF THE OTHER EVIDENCE DEFENDANT HAS SUBMITTED IN THIS CASE TO SHOW THAT THE NATURE OF SCIENTOLOGY CONTINUES TO BE RECOGNIZED AS A LIVE PUBLIC CONTROVERSY AND THAT SCIENTOLOGY INTIMIDATES AND CRITICIZES ITS MEMBERS AND CRITICS.

ARGUMENT 2: "THE INJUNCTION VIOLATES THE FIRST AMENDMENT - THIS AGAIN IS SIMPLY AN ARGUMENT THAT THE COURT PREVIOUSLY MISINTERPRETED THE LAW. THE PURPORTED "NEW" EVIDENCE IS IRRELEVANT TO WHETHER THE INJUNCTION VIOLATES THE FIRST AMENDMENT.

ARGUMENT 3: "THE INJUNCTION PREVENTS ARMSTRONG FROM DEFENDING HIMSELF IN OTHER LITIGATION WITH CSI" - THIS IS NOT "NEW OR DIFFERENT" SINCE PLAINTIFF SOUGHT THE OBJECTED TO PROHIBITION IN ITS MOTION SEEKING A PERMANENT INJUNCTION. THE BANKRUPTCY ORDER IS NOT "NEW OR DIFFERENT" SINCE, EVEN IF THE BANKRUPTCY COURT HAD NOT DIRECTED THAT TESTIMONY BE VIA DECLARATION, DEFENDANT WOULD HAVE HAD THE SAME PURPORTED PROBLEM IN OBTAINING DIRECT TESTIMONY (I.E., HE WOULD HAVE BEEN UNABLE TO TALK TO PEOPLE ABOUT SCIENTOLOGY IN ORDER TO OBTAIN DIRECT TESTIMONY IN HIS OWN DEFENSE). EVEN IF THE COURT CONSIDERS THIS ARGUMENT, IT HAS NO MERIT IN THAT DEFENDANT CAN ASK PEOPLE TO SUBMIT DECLARATIONS WITHOUT DISCUSSING HIS VIEWS AND BELIEFS ABOUT PLAINTIFF.

(CONTINUED ON PAGE 3-A-1

NOT TO BE PUBLISHED

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT
DIVISION FOUR

CHURCH OF SCIENTOLOGY INTERNATIONAL,
Plaintiff and Respondent,
v.
GERALD ARMSTRONG,
Defendant and Appellant.

No. B069450
(Super.Ct.No. BC052395)

COURT OF APPEAL - SECOND DIST.
FILED
MAY 16 1994
JOSEPH [illegible] Clerk
Deputy Clerk

APPEAL from an order of the Superior Court of Los Angeles County, Ronald M. Sohigian, Judge. Affirmed.

Ford Greene and Paul Morantz for Defendant and Appellant.

Bowles & Moxon, Karen D. Holly, Wilson, Ryan & Campilongo, Andrew H. Wilson, Rabinowitz, Boudin, Standard, Krinsky & Lieberman, Eric M. Lieberman, and Michael Lee Hertzberg for Plaintiff and Respondent.

EXHIBIT G

Defendant and appellant Gerald Armstrong (Armstrong) appeals from an order granting a preliminary injunction restraining Armstrong from voluntarily giving assistance to other persons litigating or intending to litigate claims against plaintiff and respondent Church of Scientology International (Church).

The injunction was granted to enforce a settlement agreement in prior litigation between Armstrong and Church. In the settlement, Armstrong agreed he would not voluntarily assist other persons in proceedings against Church.

Armstrong does not deny violating his agreement but asserts numerous reasons why his agreement should not be enforceable. We conclude that the narrowly-limited preliminary injunction, which did not finally adjudicate the merits of Armstrong's claims, was not an abuse of the trial court's discretion to make orders maintaining the status quo and preventing irreparable harm pending the ultimate resolution of the merits.

FACTUAL AND PROCEDURAL BACKGROUND

Armstrong was a member of Church between 1969 and 1981. He became an insider of high rank, familiar with Church practices and documents. He became disillusioned and left Church in 1981. When he left, he took many Church documents with him.

The Prior Action and Settlement

Church brought the prior action against Armstrong seeking return of the documents, injunctive relief against further dissemination of information contained in them, and imposition of a constructive trust. Mary Sue Hubbard, wife of Church founder L. Ron Hubbard, intervened asserting various torts against Armstrong. Armstrong filed a cross-complaint seeking damages for fraud, intentional infliction of emotional distress, libel, breach of contract, and tortious interference with contract.

Church's complaint and Hubbard's complaint in intervention were tried in 1984 by Judge Breckenridge. That trial led to a judgment, eventually affirmed on appeal, holding Armstrong's conversion of the documents was justified because he believed the conversion necessary to protect himself from Church's claims that he had lied about Church matters and L. Ron Hubbard. (Church of Scientology v. Armstrong (1991) 232 Cal.App.3d 1060, 1063, 1073.)

Armstrong's cross-complaint in that case was settled in December 1986 by the settlement agreement which is the subject of the injunction in the present case.

In the settlement agreement, the parties mutually released each other from all claims, except the then-pending appeal of Judge Breckenridge's decision on Church's complaint, which was expressly excluded. The settlement involved a number of persons engaged in litigation against Church, all represented by Attorney Michael Flynn. As a result of the settlement, Armstrong was paid $800,000. Armstrong's cross-complaint was dismissed with prejudice, as agreed, on December 11, 1986.

The portions of the settlement agreement most pertinent to this appeal are paragraphs 7-G, 7-H, and 10, in which Armstrong agreed not to voluntarily assist other persons intending to engage in litigation or other activities adverse to Church.[1]

---

[1] "G. Plaintiff agrees that he will not voluntarily assist or cooperate with any person adverse to Scientology in any proceeding against any of the Scientology organizations, individuals, or entities listed in Paragraph 1 above. Plaintiff also agrees that he will not cooperate in any manner with any organizations aligned against Scientology. [¶] H. Plaintiff agrees not to testify or otherwise participate in any other judicial, administrative or legislative proceeding adverse to Scientology or any of the Scientology Churches, individuals or entities listed in Paragraph 1 above unless compelled to do so by lawful subpoena or other lawful process. Plaintiff shall not make himself amenable to service of any such subpoena in a manner which invalidates the intent of this provision. Unless required to do so by such subpoena, Plaintiff agrees not to discuss this litigation or his experiences with and knowledge of the Church with anyone other than members of his immediate family. As provided hereinafter in Paragraph 18(d), the contents of this Agreement may not be disclosed. [¶] . . . 10. Plaintiff agrees that he will not assist or advise anyone, including individuals, partnerships, associations, corporations, or governmental agencies contemplating any claim or engaged in litigation or involved in or contemplating any activity adverse to the interests of any entity or class of persons listed above in Paragraph 1 of this Agreement."

Paragraph 20 of the agreement authorizes its enforcement by injunction.

The Present Action

In February 1992, Church filed a complaint in the present action alleging Armstrong's violation of the settlement agreement and seeking damages and injunctive relief.

In support of its motion for a preliminary injunction, Church presented evidence that since June 1991 Armstrong had violated the agreement by working as a paralegal for attorneys representing clients engaged in litigation against Church and by voluntarily and gratuitously providing evidence for such litigation. Armstrong worked as a paralegal for Attorney Joseph Yanny, who represented Richard and Vicki Aznaran in a multimillion dollar suit against Church in federal court. Armstrong also voluntarily provided declarations for use in the Aznarans' case. Armstrong thereafter worked for Attorney Ford Greene on the Aznaran and other Church related matters.

Armstrong did not deny the charged conduct but asserted the settlement agreement was not enforceable for various reasons, primarily that it was against public policy and that he signed it under duress.

The Trial Court's Preliminary Injunction

The trial court granted a limited preliminary injunction, with exceptions which addressed Armstrong's argument that the settlement agreement violated public policy by requiring suppression of evidence in judicial proceedings.

The court found that Armstrong voluntarily entered the settlement agreement for which he received substantial compensation, and that Armstrong was unlikely to prevail on his duress claim. The court found that Armstrong could contract as part of the settlement to refrain from exercising various rights which he would otherwise have. Balancing the interim harms to the parties, the court found that to the extent of the limited acts covered by the preliminary injunction, Church would suffer irreparable harm which could not be compensated by monetary damages, and harm for which monetary damages would be difficult to calculate. (Code Civ. Proc., § 526, subds. (a)(2), (a)(4), (a)(5).)

The court's order provides, in pertinent part: "Application for preliminary injunction is granted in part, in the following respects only. [¶] Defendant Gerald Armstrong, his agents, and persons acting in concert or conspiracy with him (excluding attorneys at law who are not said defendant's agents or retained by him) are restrained and enjoined during the pendency of this suit pending further order of court from doing directly or indirectly any of the following: [¶] Voluntarily assisting any person (not a governmental organ or entity) intending to make, intending to press, intending to arbitrate, or intending to litigate a claim against the persons referred to in sec. 1 of the 'Mutual Release of All Claims and Settlement Agreement' of December, 1986 regarding such claim or regarding pressing, arbitrating, or litigating it. [¶] Voluntarily assisting any person (not a governmental organ or entity) arbitrating or litigating a claim against the persons referred to in sec. 1 of the 'Mutual Release of All Claims and Settlement Agreement' of December, 1986."

The court provided the following exceptions to address Armstrong's public policy arguments: "The court does not intend by the foregoing to prohibit defendant Armstrong from: (a) being reasonably available for the service of subpoenas on him; (b) accepting service of subpoenas on him without physical resistance, obstructive tactics, or flight; (c) testifying fully and fairly in response to properly put questions either in deposition, at trial, or in other legal or arbitration proceedings; (d) properly reporting or disclosing to authorities criminal conduct of the persons referred to in sec. 1 of the 'Mutual Release of All Claims and Settlement Agreement' of December, 1986; or (e) engaging in gainful employment rendering clerical or paralegal services not contrary to the terms and conditions of this order."

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DISCUSSION

The grant of a preliminary injunction does not adjudicate the ultimate rights in controversy between the parties. It merely determines that the court, balancing the relative equities of the parties, concludes that, pending a trial on the merits, the defendant should be restrained from exercising the right claimed. The purpose of the injunction is to preserve the status quo until a final determination of the merits of the action. (Continental Baking Co. v. Katz (1968) 68 Cal.2d 512, 528.)

The court considers two interrelated factors. The first is the likelihood the plaintiff will prevail at trial. The second is the interim harm the plaintiff is likely to sustain if the injunction is denied, as compared to the harm the defendant is likely to suffer if the injunction is granted. (Cohen v. Board of Supervisors (1985) 40 Cal.3d 277, 286.)

The decision to grant or deny a preliminary injunction rests in the discretion of the trial court. Accordingly, an appellate court's review on appeal from the granting of a preliminary injunction is very limited. The burden is on the appellant to make a clear showing that the trial court abused its discretion. (IT Corp. v. County of Imperial (1983) 35 Cal.3d 63, 69; Nutro Products, Inc. v. Cole Grain Co. (1992) 3

Cal.App.4th 860, 865.) Abuse of discretion means the trial court has exceeded the bounds of reason or contravened the uncontradicted evidence. (IT Corp. v. County of Imperial, supra, 35 Cal.3d at p. 69.)

Here, the trial court's memorandum decision reflects very careful consideration of the factors relevant to the granting of a preliminary injunction. The court weighed the relative harms to the parties and balanced the interests asserted by Armstrong. The court granted a limited preliminary injunction with exclusions protecting the countervailing interests asserted by Armstrong. We find no abuse of discretion. We cannot say that the trial court erred as a matter of law in weighing the hardships or in determining there is a reasonable probability Church would ultimately prevail to the limited extent reflected by the terms of the preliminary injunction.

Although Armstrong's "freedom of speech" is affected, it is clear that a party may voluntarily by contract agree to limit his freedom of speech. (See In re Steinberg (1983) 148 Cal.App.3d 14, 18-20 [filmmaker agreed to prior restraint on distribution of film]; ITT Telecom Products Corp. v. Dooley (1989) 214 Cal.App.3d 307, 319 [employee's agreement not to disclose confidential information; "it is possible to waive even First Amendment free speech rights by contract"]; Snepp v. United States (1980) 444 U.S. 507, 509, fn. 3 [book by CIA employee subject to prepublication clearance by terms of his employment contract].)

The exceptions in the trial court's injunction assured that the injunction would not serve to suppress evidence in legal proceedings. The injunction expressly did not restrain Armstrong from accepting service of subpenas, testifying fully and fairly in legal proceedings, and reporting criminal conduct to the authorities. (See Philippine Export & Foreign Loan Guarantee Corp. v. Chuidian (1990) 218 Cal.App.3d 1058, 1081-1082.) This contrasts with the stipulation in Mary R. v. B. & R. Corp. (1983) 149 Cal.App.3d 308, 315-316, cited by Armstrong, which prevented a party from disclosing misconduct to regulatory authorities.

This appeal is only from the granting of a preliminary injunction which expressly did not decide the ultimate merits. As limited by the trial court here, the preliminary injunction merely restrains, for the time being, Armstrong's voluntary intermeddling in other litigation against Church, in violation of his own agreement. We decline any extended discussion of Armstrong's shotgun-style brief, which offers more than a dozen separate contentions against enforcement. It suffices to say that Armstrong has not borne his burden on appeal to demonstrate a clear abuse of discretion.

DISPOSITION

The order granting a preliminary injunction is affirmed.

NOT TO BE PUBLISHED

VOGEL (C.S.), Acting P.J.

We concur:

HASTINGS, J.

KLEIN (Brett), J.*

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*Assigned by the Chairperson of the Judicial Council.

PROOF OF SERVICE

STATE OF CALIFORNIA)
) ss.
COUNTY OF LOS ANGELES)

I am employed in the County of California, State of California. I am over the age of eighteen (18) years and not a party to the within action. My business address is 6255 Sunset Boulevard, Suite 2000, Hollywood, CA 90028.

On October 26, 1995 I served the foregoing document described as REQUEST FOR JUDICIAL NOTICE IN SUPPORT OF PLAINTIFF'S MOTION FOR (1) SUMMARY ADJUDICATION OF THE FIRST CAUSE OF ACTION OF ARMSTRONG'S FIRST AMENDED CROSS-COMPLAINT; (2) SEVERANCE; (3) DISMISSAL OF UNADJUDICATED CLAIMS; AND (4) ENTRY OF FINAL JUDGMENT on interested parties in this action,

[ ] by placing the true copies thereof in sealed envelopes as stated on the attached mailing list;

[X] by placing [ ] the original [X] true copies thereof in sealed envelopes addressed, certified mail, as follows:

Ford Greene
HUB Law Offices
711 Sir Francis Drake Blvd.
San Anselmo, CA 94960-1949

MICHAEL WALTON
700 Larkspur Landing Circle
Suite 120
Larkspur, CA 9493

[ ] *I deposited such envelope in the mail at Los Angeles, California. The envelope was mailed with postage thereon fully prepaid.

[X] As follows: I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with U.S. postal service on that same day with postage thereon fully prepaid at Los Angeles, California in the ordinary course of business. I am aware that on motion of party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing an affidavit.

Executed on October 26, 1995 at Los Angeles, California.

[ ] **(BY PERSONAL SERVICE) I delivered such -- envelopes by hand to the offices of the addressees.

Executed on October 18, 1995, at San Rafael, California.

[X] (State) I declare under penalty of the laws of the State of California that the above is true and correct.

[ ] (Federal) I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

Matt Ward
Print or Type Name

Matt Ward
Signature

* (By Mail, signature must be of person depositing envelope in mail slot, box or bag)

** (For personal service signature must be that of messenger)

9618

FILED

JAN 24 1996

MARIN COUNTY CLERK
BY: E. Keswick, Deputy

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Attorneys for Plaintiff
and Cross-Defendant
CHURCH OF SCIENTOLOGY INTERNATIONAL

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF MARIN

CHURCH OF SCIENTOLOGY INTERNATIONAL, a California not-for-profit religious corporation,

Plaintiff,

v.

GERALD ARMSTRONG, et al.,

Defendants.

AND RELATED CROSS-ACTIONS

Case No. 157 680
BC 052395 LA
[CONSOLIDATED]

DECLARATION OF ANDREW H. WILSON IN SUPPORT OF PLAINTIFF/CROSS-DEFENDANT'S RENEWAL MOTION FOR SUMMARY JUDGMENT

Date: March 8, 1996
Time: 9:00 a.m.
Dept: 1

Trial Date: Vacated

I, ANDREW H. WILSON, hereby declare:

1. I am an attorney duly licensed to practice law in the State of California, and I am a member of Wilson, Ryan & Campilongo, counsel of record in this action for Plaintiff/Cross-Defendant Church of Scientology International ("Plaintiff" or the "Church"). I have personal knowledge of the facts set forth below and, if

called upon to do so, I could and would competently testify thereto.

2. The original complaint in this action for breach of contract (the "Breach Case") was filed in Marin County in February, 1992. Thereafter, at defendant/cross-complainant Gerald Armstrong's ("Armstrong") request, the case was transferred to Los Angeles. A second action for fraudulent conveyance (the "Fraudulent Conveyance Case") was filed in Marin County in July, 1993, after Plaintiff learned during discovery that Armstrong had transferred all of his assets, including real property located in Marin County, shortly before he began to repeatedly breach the Mutual Release of All Claims and Settlement Agreement (the "Settlement Agreement") which forms the basis of the Breach Case.

3. In September, 1994, the Breach Case was transferred back to Marin County, and the two cases consolidated for trial. At the time of the consolidation, the operative complaint in the Breach Case was the Second Amended Complaint, which contained nineteen causes of action for breach of contract, and a twentieth claim for injunctive relief. In the Fraudulent Conveyance Case, the operating pleading was the Verified Complaint, containing three causes of action against three defendants.

4. In the Breach Case, Plaintiff was granted summary adjudication of the fourth and sixth causes of action on January 27, 1995. Summary adjudication was also granted as to the thirteenth, sixteenth, seventeenth and nineteenth causes of action on October 17, 1995. In addition, on October 17, 1995, the Court entered a permanent injunction against Armstrong, granting summary adjudication of the twentieth cause of action.

5. In the Fraudulent Conveyance Case, Armstrong filed a

single-count cross-complaint for abuse of process. That claim was summarily adjudicated in the Church's favor on September 9, 1994.

6. In the Breach Case, Defendant Armstrong filed a Verified Amended Cross-Complaint For Declaratory Relief, Abuse of Process and Breach of Contract (the "Cross-Complaint"). On August 16, 1994, the Los Angeles Superior Court granted the Church summary adjudication of the second cause of action for abuse of process and of the third cause of action for breach of contract. The sole remaining cause of action seeks a declaration that paragraphs 4A, 4B, 7D, 7E, 7G, 7H, 7I, 10, 18D and 18E of the Settlement Agreement should be severed and held not to be legally enforceable because "they were designed to suppress evidence and obstruct justice." Paragraph 6 of the Cross-Complaint (Exhibit A to Request for Judicial Notice). Armstrong further alleges that:

> [He] is being harmed by the settlement agreement insofar as his First Amendment Rights are curtailed, his ability to freely pursue gainful employment is restricted, and his reputation is being attacked in judicial proceedings which he is unable to counter without risking violation of the settlement agreement.

7. On April 18, 1995, Armstrong filed a voluntary petition for bankruptcy and proceedings in the consolidated cases were automatically stayed. On May 25, 1995, the bankruptcy court granted the Church's petition for relief from stay as to the Breach Case, but the Fraudulent Conveyance Case remains stayed while the bankruptcy is proceeding.

8. Laurie Bartilson, Esq. of Moxon and Bartilson, and I have been the attorneys of record for Plaintiff in the Fraudulent Conveyance Case and the Breach Case since their inception.

9. On October 26, 1995, the Church filed its motion for (i) summary adjudication of the first cause of action of Armstrong's Verified Amended Cross-Complaint; (ii) severance of the Fraudulent Conveyance Case from the Breach Case; (iii) dismissal of unadjudicated claims of Plaintiff of the Breach Case; and (iv) entry of final judgment in the Breach Case (the "Prior Motion"). Summary adjudication of the first cause of action of the Cross-Complaint was brought on the ground that the only remaining cause of action of Armstrong's Cross-Complaint seeks declaratory relief as to provisions of the Settlement Agreement which the Court had already enforced against Armstrong. Plaintiff argued that orders of this Court granting summary judgment, including the order of permanent injunction, are orders enforcing paragraphs 7D, 7E, 7G, 7H, 7I, 10, 18D and 18E of the Settlement Agreement, and declaring the rights and obligations of Armstrong pursuant to the Settlement Agreement.

10. By minute order dated December 1, 1995, the Honorable Gary W. Thomas denied Plaintiff's motion for summary adjudication of the first cause of action of Armstrong's Verified Amended Cross-Complaint but granted the Prior Motion in all other respects. As to the first cause of action of the Cross-Complaint, the Court found that Plaintiff had "failed to meet its burden of showing that the Court has determined the enforceability of paragraphs 7I and 18E of the Settlement Agreement." (See, Exhibit F to Request for Judicial Notice). However, the Court also determined that by previous summary adjudication orders that paragraphs 4A, 4B, 7D, 7E, 7G, 7H, 10 and 18D are enforceable and do not suppress evidence or obstruct justice.

11. The present motion for summary judgment is brought on new

and different grounds than the Prior Motion. The new and different facts and circumstances are paragraphs 7I and 18E of the Settlement Agreement is not designed to suppress evidence and obstruct justice. On its face, the language is not designed in any way to restrict first amendment rights, it does not hinder Armstrong's ability to seek employment since the confidentiality provision is specifically limited to litigation between the parties and because neither party is allowed to disclose the "confidential" information, it specially protects Armstrong's reputation from attack in litigation between he and the Church.

12. In the alternative, Plaintiff also brings this motion on the new and different facts and circumstances that the Church has never claimed breach of paragraphs 7I and 18E of the Settlement Agreement. As such, the alleged controversy is not ripe and does not present a justiciable controversy and accordingly should be dismissed.

13. The only actions pending between the parties are the Fraudulent Conveyance Case, the Breach Case, and the adversary proceeding filed by the Church in the bankruptcy matter. In these actions, Plaintiff has never sought to enforce paragraph 7I or paragraph 18E of the Settlement Agreement nor has it claimed that Armstrong breached those paragraphs. Presently, it is highly unlikely that the Church will seek to enforce these provisions since

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paragraph 7I does nothing more than amplify the release and confidentiality provisions of the Settlement Agreement and paragraph 18E is no more than a specification of the well-recognized implied covenant of good faith and fair dealing contained in every contract. For these reasons, not only is there not a justiciable controversy at this time over these paragraphs, it appears there never will be.

14. The Prior Motion was not brought on the same grounds and circumstances as this motion is brought due to my mistaken belief that the Court had already determined the enforceability of the paragraphs of the Settlement Agreement for which Armstrong seeks declaratory relief.

I declare under penalty of perjury of the laws of the State of California that the foregoing is true and correct. Executed at San Francisco, California, this 18th day of January, 1996.

ANDREW H. WILSON

9624

FILED

JAN 24 1996

MARIN COUNTY CLERK
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CHURCH OF SCIENTOLOGY INTERNATIONAL

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF MARIN

CHURCH OF SCIENTOLOGY INTERNATIONAL, a California not-for-profit religious corporation,

Plaintiff,

vs.

GERALD ARMSTRONG, et al.,

Defendants.

AND RELATED CROSS-ACTIONS

CASE NO. 157 680
BC 052395 LA
[CONSOLIDATED]

DECLARATION OF LAURIE J. BARTILSON IN SUPPORT OF PLAINTIFF/CROSS-DEFENDANT'S RENEWAL MOTION FOR SUMMARY JUDGMENT OF DEFENDANT GERALD ARMSTRONG'S CROSS-COMPLAINT

Date: March 8, 1996
Time: 9:00 a.m.
Dept: 1

TRIAL DATE: Vacated

I, LAURIE J. BARTILSON, hereby declare:

1. I am an attorney duly licensed to practice law in the State of California, and I am a member of Moxon & Bartilson, counsel of record in this action for plaintiff/cross-defendant Church of Scientology International ("plaintiff" or the "Church"). I have personal knowledge of the facts set forth below and, if called upon to do so, I could and would competently testify thereto.

2. Andrew H. Wilson, Esq. of Wilson, Ryan & Campilongo and I have been the

attorneys of record for the Church in this consolidated action since the inception. As more fully set forth in the Declaration of Andrew H. Wilson In Support, and filed concurrently herewith, on October 26, 1995, this Court severed the fraudulent conveyance action from the Church's breach of contract case (the "Breach Case"), dismissed the unadjudicated claims of plaintiff's Breach Case and entered final judgment in that action. The sole remaining issue in the Breach Case is Cross-Defendant Gerald Armstrong's ("Armstrong") First Cause of Action for Declaratory Relief alleged in his Verified Amended Cross-Complaint.

3. The only actions pending between the parties are the Fraudulent Conveyance Case, the Breach Case, and the adversary proceeding filed by the Church in the bankruptcy matter. In these actions, plaintiff has never sought to specifically enforce paragraph 7I or paragraph 18E of the Settlement Agreement nor has it claimed that Armstrong breached those paragraphs. Presently, it is highly unlikely that the Church will seek to enforce these provisions since paragraph 7I does nothing more than amplify the release and confidentiality provisions of the Settlement Agreement and paragraph 18E is no more than a specification of the well-recognized implied covenant of good faith and fair dealing contained in every contract. For these reasons, not only is there not a justiciable controversy at this time over these paragraphs, it appears there never will be.

4. The Prior Motion was not brought on the same grounds and circumstances as this motion is brought due to my mistaken belief that the Court had already determined the enforceability of the paragraphs of the Settlement Agreement for which Armstrong seeks declaratory relief.

5. In this action Armstrong has introduced thousands of pages of evidence originating in the earlier litigation. Yet the Church has not sought to enforce paragraph 7I of the Settlement Agreement as a bar to that "evidence." In addition, Armstrong's cross-complaints in this consolidated action have included thousands of pages of allegations

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concerning events which allegedly occurred prior to the signing of the Settlement Agreement. These claims were dismissed by this Court and the Los Angeles Court as time-barred.

6. On December 1, 1995, this Court denied the Church's motion for summary adjudication of the first cause of action for declaratory relief of Armstrong's Cross-Complaint but found that it has already determined by its previous summary adjudication orders that paragraphs 4A, 4B, 7D, 7E, 7G, 7H, 10 and 18D are enforceable and do not suppress evidence or obstruct justice.

I declare under penalty of perjury of the laws of the State of California that the foregoing is true and correct. Executed at Los Angeles, California, this 17th of January, 1996.

LAURIE J. BARTILSON

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9627
FILED
JAN 24 1996
HOWARD HANSON
MARIN COUNTY CLERK
BY: E. Keswick, Deputy

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF MARIN

CHURCH OF SCIENTOLOGY INTERNATIONAL, a California not-for-profit religious corporation,

Plaintiff,

v.

GERALD ARMSTRONG, et al.,

Defendants.

AND RELATED CROSS-ACTIONS

Case No. 157 680
BC 052395 LA

SEPARATE STATEMENT OF UNDISPUTED FACTS IN SUPPORT OF PLAINTIFF/ CROSS-DEFENDANT'S RENEWAL MOTION FOR SUMMARY JUDGMENT OF ARMSTRONG'S VERIFIED AMENDED CROSS-COMPLAINT

Date: March 8, 1996
Time: 9:00 a.m.
Dept: 1

Trial Date: Vacated

Plaintiff/Cross-Defendant Church of Scientology International (the "Church") submits this statement of undisputed material facts in support of the Church's Motion for Summary Judgment of Cross-Complainant Armstrong's Verified Amended Cross-Complaint (the "Cross-Complaint").

ISSUE ONE: The Church is entitled to summary judgment of the Cross-Complaint because all of the issues alleged in the remaining first cause of action for declaratory relief are either moot or not ripe for judicial determination. Paragraphs 4A, 4B, 7D, 7E, 7G, 7H, 10 and 18D of the Mutual Release of All Claims and Settlement Agreement (the "Settlement Agreement") have already been resolved against Armstrong and in the Church's favor and Paragraphs 7I and 18E of the Settlement Agreement are not ripe for judicial resolution.

UNDISPUTED FACTS	**EVIDENTIARY SUPPORT**
1. In the First Cause of Action, Armstrong seeks the following relief: [A] judicial determination of his rights and duties, and a declaration that the only provisions of the settlement agreement which are valid are those which directly pertain to the dismissal of his cross-complaint in Armstrong I in consideration for the payment of a sum of money, and that paragraphs 4A, 4B, 7D, 7G, 7H, 7I, 10, 18D, 18E of the settlement agreement should be severed and held not to be legally enforceable because they were designed to suppress evidence and obstruct justice.	1. Request for Judicial Notice, Exhibit A, Cross-Complaint, p. 29, ¶61.
2. The orders of this Court granting summary judgment, including the Order of Permanent Injunction, are	2. The Settlement Agreement, ¶¶ 7D, 7E, 7G, 7H, 10, and 18D attached as Exhibit B to Request for Judicial Notice;

orders enforcing paragraphs 7D, 7E, 7G, 7H, 10 and 18D of the "Mutual Release of All Claims and Settlement Agreement" of December, 1986.	Order Granting Summary Adjudication of the Fourth and Sixth Causes of Action attached as Exhibit C to Request for Judicial Notice; Order Granting Summary Judgment of the Thirteenth, Sixteenth, Seventeenth, and Nineteenth Causes of Action attached as Exhibit D to Request for Judicial Notice; Order of Permanent Injunction attached as Exhibit E to Request for Judicial Notice; Order Denying Plaintiff's Motion for Summary Adjudication of the First Cause of Action of Armstrong's Cross-Complaint ("Order Denying Summary Adjudication of Cross-Complaint") attached as Exhibit F to Request for Judicial Notice.
3. Paragraphs 4A and 4B concern an appeal which has already become final, and as to which no rights, duties or obligations could be enforced in the future.	3. The Settlement Agreement, ¶¶ 4A and 4B attached as Exhibit B to Request for Judicial Notice; Portions of the Opinion of the Court of Appeal, Second Appellate

	District, in the case of Church of Scientology of California v. Armstrong, Case No. B069450, attached as Exhibit G to Request for Judicial Notice; Order Denying Summary Adjudication of Cross-Complaint, attached as Exhibit F to Request for Judicial Notice.
4. On December 1, 1995, this Court denied the Church's motion for summary adjudication of the first cause of action for declaratory relief of Armstrong's Cross-Complaint but found that it has already determined by its previous summary adjudication orders that paragraphs 4A, 4B, 7D, 7E, 7G, 7H, 10 and 18D are enforceable and do not suppress evidence or obstruct justice.	4. Order Denying Summary Adjudication of Cross-Complainant attached as Exhibit F to Request for Judicial Notice.
5. The only actions pending between the Church and Armstrong are this consolidated action and an adversary proceeding filed by the Church	5. Declaration of Andrew H. Wilson In Support of Renewal Motion ("Wilson Decl."), ¶ 13; Declaration of Laurie Bartilson ("Bartilson Decl."), ¶ 3.

in Armstrong's bankruptcy (collectively the "Actions").	
6. In the Actions between the Church and Armstrong, the Church has never tried to specifically enforce paragraphs 7I and 18E of the Settlement Agreement or to recover damages for breaches of them by Armstrong.	6. Wilson Decl. at ¶ 13; Bartilson Decl. at ¶ 3.
7. It is not likely that the Church will seek to enforce Paragraphs 7I and 18E of the Settlement Agreement.	7. Wilson Decl. at ¶ 13; Bartilson Decl. at ¶ 3.

ISSUE TWO: The Church is entitled to summary judgment of the Cross-Complaint because all of the issues alleged in the remaining first cause of action for declaratory relief are moot. Paragraphs 4A, 4B, 7D, 7E, 7G, 7H, 10 and 18D of Settlement Agreement have already been resolved against Armstrong and in the Church's favor and Paragraphs 7I and 18E of the Settlement Agreement are not designed to suppress evidence and obstruct justice.

The Church incorporates herein Undisputed Facts and Evidentiary Support Nos. 1 to 4, supra.

UNDISPUTED FACTS	**EVIDENTIARY SUPPORT**
8. Paragraph 7I of the Settlement Agreement constitutes a more specific expression of the parties'	8. The Settlement Agreement, ¶¶ 4, 5, 6 and 7I attached as Exhibit B to the Request for Judicial Notice; see also,

intent, manifested in paragraphs 4, 5 and 6, to mutually release one another for damages relating to any claims then pending, or injuries known or unknown at the time of the execution of the Settlement Agreement.	Bartilson Decl. at ¶6.
9. Paragraphs 7I and 18E do not suppress evidence and obstruct justice.	9. The Settlement Agreement, ¶¶ 7I and 18E, attached as Exhibit B to the Request for Judicial Notice.

Dated: January 19, 1996

Respectfully Submitted,

Laurie J. Bartilson
BOWLES & MOXON

WILSON, RYAN & CAMPILONGO

By: Linda Fong
Andrew H. Wilson
Linda M. Fong

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9633

FILED

JAN 24 1996

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CHURCH OF SCIENTOLOGY INTERNATIONAL

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF MARIN

CHURCH OF SCIENTOLOGY INTERNATIONAL, a California not-for-profit religious corporation,

Plaintiff,

vs.

GERALD ARMSTRONG, et al.,

Defendants.

AND RELATED CROSS-ACTIONS

CASE NO. 157 680
BC 052395 LA
[CONSOLIDATED]

MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF PLAINTIFF/CROSS-DEFENDANT'S RENEWAL MOTION FOR SUMMARY JUDGMENT OF DEFENDANT GERALD ARMSTRONG'S CROSS-COMPLAINT

Date: March 8, 1996
Time: 9:00 a.m.
Dept: 1

Trial Date: Vacated

I. INTRODUCTION

Plaintiff/Cross-Defendant Church of Scientology International ("CSI") hereby renews its motion for summary judgment on defendant/cross-complainant Gerald Armstrong's first cause of action. That cause of action -- the only surviving claim in this case[1] -- seeks a declaratory judgment that various provisions of a 1986 Settlement Agreement between CSI and Armstrong are unenforceable because they were "designed to suppress evidence and obstruct justice." Since CSI's claims have all been adjudicated,[2] the instant motion, if granted, will terminate this action.

II. PROCEDURAL HISTORY

A. The Prior Motion

On October 26, 1995, CSI moved for summary adjudication of Armstrong's first cross-claim, which seeks a declaration that paragraphs 4A, 4B, 7D, 7G, 7H, 7I, 10, 18D, and 18E of a 1986 Settlement Agreement are unenforceable. CSI's previous motion argued that the Court had already upheld the validity and enforceability of each of the specified paragraphs in the course of adjudicating previous summary adjudication motion. In an order dated December 1, 1995, this Court agreed that the prior summary adjudications had upheld the validity of all but two paragraphs of the 1986 Settlement Agreement but declined to make the same ruling regarding paragraphs 7I and 18E. Thus, the Court held it was compelled to deny CSI's previous summary adjudication motion as to those paragraphs.

B. The Instant Motion

This motion renews CSI's motion -- and since only this claim survives, it is a motion for summary judgment. CSI relies upon this Court's December 1, 1995 order, which is law of the case, that paragraphs 4A, 4B, 7D, 7G, 7H, 10 and 18D are valid and enforceable provisions, as previously determined in earlier summary adjudication orders. CSI is entitled to a judgment as a matter of law as to paragraphs 7I and 18E because: (1) no actual controversy exists relating to the legal rights and duties of the parties with respect to these two paragraphs, and (2) the paragraphs are valid and enforceable provisions and are not in any sense "designed to suppress evidence and obstruct justice."

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[1] Armstrong's second and third causes of action already were summarily dismissed by the Los Angeles Superior Court before this case was transferred to this Court.

[2] On December 1, 1995, this Court severed CSI's fraudulent conveyance action against Armstrong and stayed it pending Armstrong's bankruptcy proceedings. The Court also dismissed, at CSI's request, those claims of CSI which had not previously been adjudicated, and entered final judgment in favor of CSI on the previously adjudicated claims of CSI's Second Amended Complaint.

Renewal of this motion is authorized by Code of Civil Procedure §1008(b), which provides that a subsequent application for an order which was refused in whole or in part may be made if based upon "new *or different* facts, circumstances or law." (emphasis added). The purpose of the statute is to make clear that trial courts may, and indeed, should "review, reweigh, and modify an order when new facts [or circumstances] are presented which demonstrate the need to do so ... [to avoid] needlessly burden[ing] the courts and the litigants with plenary trials that were otherwise capable of summary resolution." *Graham v. Hansen* (1982), 128 Cal.App.3d 965, 971, 180 Cal.Rptr. 604, 608; *see De La Pena v. Wolfe* (1986) 177 Cal.App.3d 481, 485, 223 Cal.Rptr. 325, 328 (upholding a trial court's order granting a renewed summary judgment motion "based on recently published case law.")

This renewed motion fits squarely within the language and spirit of CCP §1008(b) and its appellate interpretations. It is based on different circumstances, facts and law from the earlier motion. The prior motion was based exclusively on CSI's position that the law of the case required the dismissal of Armstrong's remaining cross-claim. In an effort to simplify the issues before the Court, CSI did not independently argue that the relevant paragraphs of the 1986 Settlement Agreement were enforceable and valid. This Court agreed with CSI's position, except with respect to two minor, virtually boilerplate, paragraphs of the Agreement, which the Court held had not previously been addressed in earlier summary adjudication orders. In so holding, this Court implicitly invited CSI to show that Armstrong's claim with respect to those two paragraphs was also defective. By this motion, CSI has now done that. This motion is based on the alternative grounds that no case or controversy exists with respect to paragraphs 7I or 18E, and that those provisions, in any event, are valid and enforceable. If this Court agrees, the Court and the parties will not "needlessly [be] burden[ed] ... with [a] plenary trial ... otherwise capable of summary adjudication." *Graham v. Hansen*, 128 Cal.App.3d at 971, 180 Cal.Rptr. at 608.[3]

III. ARMSTRONG IS NOT ENTITLED TO THE RELIEF HE SEEKS.

A. There Is No Actual Or Justiciable Controversy Warranting Declaratory Relief.

To maintain an action for declaratory relief, a claimant such as Armstrong must do more than simply allege that he and the defendant disagree about the terms of a contract. Such an action must be predicated on a real, not a theoretical, controversy. Indeed:

> [T]he standard for the granting of declaratory relief which is in the nature of ripeness and standing is well established. *The controversy must be "one which admits of definitive and conclusive relief by judgment within the field of judicial administration, as distinguished from an advisory opinion upon a particular or hypothetical state of facts. The judgment must decree, not suggest, what the parties may or may not do.*

Sherwyn & Handel v. California State Department of Social Services (1985) 173 Cal.App.3d 52, 57, 218 Cal.Rptr. 778, 782, quoting *Selby Realty Co. v. City of Santa Buenaventura* (1973) 10 Cal.3d, 110, 117 (emphasis supplied).

Parties are not entitled to ask a court to interpret a contractual clause for them, when no actual controversy exists as to the meaning or validity of the provision. In *Pittenger v. Home Savings & Loan Assn.* (1958) 166 Cal.Ap..2d 32, for example, plaintiff filed a declaratory relief action against defendant Home Savings alleging an actual controversy relating to the parties' respective legal rights and duties under the provisions of a deed of trust. Home Savings claimed it had an unrestricted right to select the insurer and form of policy and to reject any other while plaintiff claimed it had no such right to reject a policy without good cause and upon reasonable grounds. Subsequent to the filing of the original complaint Home Savings sold and transferred the note and deed of trust to defendant Western Mortgage Corporation ("Western"), which thereafter accepted the insurance coverage proffered by plaintiff. The appellate court affirmed the judgment, finding the action was moot and presented no actual or justiciable controversy. Quoting from *Merkley v. Merkley* (1939) 12 Cal.2d 543, 547, the court held:

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[3] CSI has met the procedural requirements of CCP §1008(b) by accompanying this motion with the affidavits of Andrew Wilson and Laurie Bartilson, containing the specified information required by the statute.

> The situation has not developed which would require a construction of any instrument introduced in evidence and relied on by plaintiff. *There is no more than a conjecture or supposition on [plaintiff's] part that at some time in the future a controversy may arise wherein [plaintiff] might become interested in having adjudicated the [defendant's] interest under those documents.* The facts in the record present an academic question only. The courts will not exercise the discretionary power to declare rights which do not give rise to a present controversy.

Pittenger, *supra*, 166 Cal.App.2d at 37 (emphasis supplied).[4]

The italicized rule of law both controls and dooms Armstrong's declaratory relief cross-claim. Paragraphs 7I and 18E are broad, generalized provisions aimed at achieving two laudable goals which are common to any settlement: a conclusive ending to the controversy giving rise to the settlement [¶ 7I], and a covenant of good faith and fair dealing [¶18E]. During the course of this protracted litigation concerning the enforcement of the Settlement Agreement, neither has been at issue between the parties or even in dispute.[5] Not only is there not a justiciable controversy at this time over these paragraphs, it appears there never will be. [Wilson Decl., ¶ 13 and Bartilson Dec. ¶ 3] Armstrong's question as to their meaning thus presents the Court with an "academic question" which is not properly the subject of a declaratory relief action.

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[4] The appellate court in Pittenger also rejected plaintiff's argument that defendants acted in bad faith due to the fact that the sale was merely a maneuver to end the controversy between the parties, indicating that the exercise of a clear legal right cannot be impeached by evidence that it was prompted by a sly motive. Id. at 38. In addition, the court refused to declare the rights of lenders and borrowers with respect to the force and effect of insurance clauses such as the one in question.

[5] As this Court is aware, Armstrong has introduced thousands of pages of evidence which had its origins in the earlier litigation. The Church, however, has not raised this contractual point as a bar to that "evidence." Moreover, Armstrong's cross-complaints in these consolidated actions have included pages of allegations concerning events which allegedly occurred prior to the signing of the Settlement Agreement. These claims were dismissed by this Court and the Los Angeles Court as time-barred. [Bartilson Dec. ¶ 5]

1. There Is No Present Controversy As To Paragraph 7I

Paragraph 7I prohibits Armstrong from relitigating issues settled in 1986 in future litigation between the Church or any contractual beneficiary and Armstrong. The only actions pending between the parties are the present one and an adversary proceeding filed by the Church in Armstrong's bankruptcy. [Wilson Decl. at ¶ 13; Bartilson Decl. at ¶ 3] In both actions, the Church has never sought to enforce Paragraph 7I nor has it sought to recover damages because Armstrong breached it. At this juncture the most that Armstrong can claim is that sometime in the future he might desire an adjudication of his rights pursuant to Paragraph 7I if the Church seeks to enforce that provision. However, that event is unlikely to occur [Wilson Decl. at ¶13; Bartilson Decl. at ¶ 3], and that is precisely an advisory opinion to which Armstrong is not entitled.

State of California v. Superior Court (1974) 12 Cal.3d 237 is applicable to this circumstance. There, among other things, the plaintiff developers sought a judicial resolution by means of declaratory relief that they had a "vested right" to develop their lands without a permit. The Supreme Court held that they were not entitled to declaratory relief on that issue because they had not sought a vested rights determination from the commission issuing permits nor had they been denied such a determination and accordingly there was no "actual controversy." Id. at 249.

Similarly, the Church has not attempted to enforce Paragraph 7I, and for that reason there is no need to determine its enforceability. The alleged controversy is not ripe, does not present a justiciable controversy, and must be dismissed. *Sherwyn & Handel v. California State Department of Social Services*, *supra*, 173 Cal.App.3d at 58.

2. There Is No Present Controversy As To Paragraph 18E

As was the case with Paragraph 7I, the Church has never specifically attempted to enforce Paragraph 18E in any litigation with Armstrong since the execution of the Settlement Agreement. Wilson Decl. at ¶ 13; Bartilson Decl. at ¶ 3. Not only is the adjudication of this paragraph not ripe, it would be a waste of judicial resources to require a judicial determination on a contractual provision that is essentially surplusage [See Part IV. B(2), *infra*]. For these reasons, the Church is entitled to summary judgment on Armstrong's cross-complaint for declaratory relief, declaring that Armstrong is not entitled to any of the relief sought.

B. Armstrong is Not Entitled to a Declaration Invalidating the Remaining Paragraphs As a Matter of Law

Even if the Court decides that Armstrong's request for declaratory relief does present an actual controversy, the Church is still entitled to summary judgment in its favor. No trial is necessary to determine that the Paragraphs 7I and 18E are valid and enforceable, or that they do not obstruct justice or suppress evidence as a matter of law.

A motion for summary judgment "shall be granted if all the papers submitted show that there is no triable issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Code Civ. Proc. § 437c(c).

Indeed, courts have found that summary judgment can be particularly appropriate in deciding contractual disputes. "Where there is no conflict as to the terms of a contract, and where its provisions are not uncertain or ambiguous, its 'meaning and effect * * * and the relation of the parties to it thereby created * * * become a question of law to be decided by the court.'" *Nizuk v. Georges* (1960) 180 Cal.App.2d 699, 705, 4 Cal.Rptr. 565, 570 (citations omitted) (Liability under written employment contract properly decided on motion for summary judgment). Here, there is no dispute as to the terms of the Settlement Agreement, and the Remaining Paragraphs which Armstrong has placed at issue are not uncertain or ambiguous. The "meaning and effect" of these paragraphs and "the relation of the parties to [them]" are now "a question of law to be decided by the court." *Id.* at 705.

1. Paragraph 7I Is Valid And Enforceable

Paragraph 7I of the Settlement Agreement states:

> The parties hereto agree that in the event of any future litigation between Plaintiff and any of the organizations, individuals or entities listed in Paragraph 1 above, that any past action or activity, either alleged in this lawsuit or activity similar in fact to the evidence that was developed during the course this lawsuit, will not be used by either party against the other in any future litigation. In other words, the "slate" is wiped clean concerning past actions by any party.

This provision of the contract does not "suppress evidence" or "obstruct justice." At most, it constitutes a more specific expression of the parties' intent, manifested in paragraphs 4, 5, and 6,[6] to mutually release one another for damages relating to any claims then pending, or injuries known or unknown at the time of the execution of the Settlement Agreement. The import of this paragraph is simply that, in the event the parties were to litigate other matters against one another in the future, they would not re-visit the evidence and issues being resolved in 1986 by the Settlement Agreement.

Indeed, the public policy of this State is to permit controverted legal matters to reach a conclusion, and to remain concluded. *See, e.g., Ricard v. Grobstein, Goldman, Stevenson, Siegel, Levine & Mangel*, (1992) 6 Cal.App. 157, 162, 8 Cal.Rptr. 139. The doctrines of res judicata and collateral estoppel, for example, prevent a party from relitigating matters which have previously been determined in court. Here, the parties reached an amiable resolution to their controversy. As part of that resolution, they agreed not to relitigate in any future controversy the facts and evidence which they had litigated prior to 1986. Such an agreement does not, as a matter of law, suppress evidence or obstruct justice, and, this Court should so find.

Moreover, nothing contained in this paragraph could reasonably be interpreted to violate Armstrong's First Amendment rights. This Court has already determined that Armstrong entered into the Agreement freely and accepted fully its benefits. It is well-established that Armstrong could -- and did -- contract for a restriction of his First Amendment rights as part of the Agreement. *ITT Telecom Products v. Dooley* (1989) 214 Cal.App.3d 307, 319.

No party has a First Amendment right to continue to litigate matters after they have been decided, or to introduce untimely and irrelevant evidence into a later controversy. Those are the only actions of Armstrong which are reasonably restricted by Paragraph 7I.

Under the circumstances, should the Court determine that the matter is ripe for adjudication, the Church is entitled to judgment as a matter of law declaring that Paragraph 7I is valid and enforceable.

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[6] See Sep.St. No. 8.

2. Paragraph 18E Is Valid And Enforceable

Paragraph 18E of the Settlement Agreement states:

> The parties further agree to forbear and refrain from doing any act or exercising any right, whether existing now or in the future, which act or exercise is inconsistent with this Agreement.

The Settlement Agreement imposed obligations on both parties reaching into the future: the Church agreed to pay Armstrong's attorney a settlement amount [Para. 3]; both sides agreed to take certain actions or refrain from taking action, concerning a pending appeal [Para. 4(B)]; Armstrong agreed to dismiss certain pending claims [Para. 4(A)]; and non-disclosure provisions prevented both sides from discussing the terms of the settlement [Para. 18(D)] and Armstrong from discussing Scientology [Paras. 7(D), 7(G), 7(H) and 10.] With all of these actions scheduled to occur after the signing of the Settlement Agreement, it was necessary for the parties to agree to cooperate to ensure that the benefits of the Settlement Agreement were achieved in full by both sides.

In short, Paragraph 18E is just an express statement of the covenant of good faith and fair-dealing which is implied in any contract entered into in California. It is well-established that,

> "There is implied in every contract a covenant by each party not to do anything which will deprive the other parties thereto of the benefits of the contract. . . .[T]his covenant not only imposes upon each contracting party the duty to refrain from doing anything which would render performance of the contract impossible by any act of his own, but also the duty to do everything that the contract presupposes that he will do to accomplish its purpose."

Witkin, *Summary of California Law* (1987), Vol. 1, Contracts, §743 p. 674, quoting *Harm v. Frasher* (1960) 181 Cal.App.2d 405, 417, and cases cited.

Paragraph 18E thus imposes no obligation on either party that is not already implied into the Settlement Agreement pursuant to California law. When obligations under a contract persist into the future, the parties have a continuing duty to refrain from taking any action which will deprive the other party of the benefits of their bargain. The precise terms of

Paragraph 18E command and obligate no more than this, and certainly require no conduct which either "suppresses evidence" or "obstructs justice."

CSI is thus entitled to judgment declaring that Paragraph 18E is also valid and enforceable as a matter of law.

IV. CONCLUSION

In the interests of judicial economy, cross-defendant Church of Scientology International respectfully requests that this Court enter final judgment in its favor by granting this motion for summary judgment of Armstrong's Verified Amended Cross-Complaint.

Dated: January ___, 1996

Respectfully Submitted,

Laurie J. Bartilson
MOXON & BARTILSON

WILSON, RYAN & CAMPILONGO

By: Linda Fong
Andrew H. Wilson
Linda M. Fong

Attorneys for Plaintiff and Cross-Defendant CHURCH OF SCIENTOLOGY INTERNATIONAL

9643

FILED

FEB - 5 1996

HOWARD HANSON
MARIN COUNTY CLERK
BY M. MOORE, DEPUTY

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Attorneys for Plaintiff

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF MARIN

CHURCH OF SCIENTOLOGY INTERNATIONAL, a California not-for-profit religious corporation,

Plaintiff,

v.

GERALD ARMSTRONG, et al.,

Defendants.

Case No. 157 680

[CONSOLIDATED]

NOTICE OF ENTRY OF ORDER RE DEFENDANT GERALD ARMSTRONG'S MOTION FOR RECONSIDERATION OF ENTRY OF PERMANENT INJUNCTION

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that on January 17, 1996 the attached Order Re Defendant Gerald Armstrong's Motion for Reconsideration of Entry of Permanent Injunction was signed by the Honorable Gary W. Thomas and filed in the above-entitled court on January 18, 1996.

DATED: February 1, 1996

WILSON, RYAN & CAMPILONGO

By:
ANDREW H. WILSON,
Attorneys for Plaintiff CHURCH OF SCIENTOLOGY INTERNATIONAL

1-18-96

9644

FILED

JAN 18 1996

HOWARD HANSON
MARIN COUNTY CLERK
by P. Fan, Deputy

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Attorneys for Plaintiff
CHURCH OF SCIENTOLOGY
INTERNATIONAL

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF MARIN

CHURCH OF SCIENTOLOGY INTERNATIONAL, a California not-for-profit religious corporation, Plaintiff, vs. GERALD ARMSTRONG, et al., Defendants.	CASE NO. 157 680 Out [~~PROPOSED~~] ORDER RE DEFENDANT GERALD ARMSTRONG'S MOTION FOR RECONSIDERATION OF ENTRY OF PERMANENT INJUNCTION DEPT: 1 TRIAL DATE: None

This matter was submitted to the Court on December 1, 1995, on motion of Defendant Gerald Armstrong for reconsideration of entry of permanent injunction. Having read and considered the moving and opposing papers,

IT IS ORDERED:

The motion of defendant Gerald Armstrong for reconsideration is denied. As will be shown, none of defendant's arguments meet the requirements of Code of Civil Procedure Section 1008, Subdivision (a).

ARGUMENT 1: "The Court must consider the Heller declaration which raises triable issues as to whether the agreement was integrated and as to the parties intent that the gag provisions were reciprocal." - It is not sufficient for purpose of a reconsideration motion to simply argue that the court misinterpreted the law. (*Gilberd v. AC Transit* (1995) 32 Cal.App.4th 1494, 1500.) Defendant's purported "new or different" evidence is not "new or different" in that it is merely cumulative of all of the other evidence defendant has submitted in this case to show that the nature of Scientology continues to be recognized as a live public controversy and that Scientology intimidates and criticizes its members and critics.

ARGUMENT 2: "The injunction violates the first amendment." - This again is simply an argument that the court previously misinterpreted the law. The purported "new" evidence is irrelevant to whether the injunction violates the first amendment.

ARGUMENT 3: "The injunction prevents Armstrong from defending himself in other litigation with CSI." - This is not "new or different" since plaintiff sought the objected to prohibition in its motion seeking a permanent injunction. The bankruptcy order is not "new or different" since, even if the bankruptcy court had not directed that testimony be via declaration, defendant would have had the same purported problem in obtaining direct testimony (i.e., he would have been unable to talk to people about Scientology in order to obtain direct testimony in his own defense). Even if the court considers this argument, it has no merit in that defendant can ask people to submit declarations without discussing his view and beliefs about plaintiff.

ARGUMENT 4: "The Sealing Order is unintelligible and unenforceable." - Again, this is not "new or different" since plaintiff sought this relief when it sought the permanent injunction.

ARGUMENT 5: "To the extent the agreement is in restraint of trade, it is invalid." - Again, this is not "new or different" since the same held true at the time plaintiff sought the permanent injunction. In any event, the injunction does not preclude defendant from working for his attorney as a paralegal. Defendant cites no authority that the injunction is invalid where is only limits the cases upon which he can work.

ARGUMENT 6: "The Heller and Long declarations raise triable issues regarding the defense of unclean hands." - Defendant points only to facts and evidence set forth in his previous

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separate statement, thus there is nothing "new or different" to support this argument.

Dated: ~~December~~ Jan 17, 199~~5~~6

Gary W Thomas
GARY W. THOMAS
Judge of the Superior Court

Submitted by:

Andrew H. Wilson
WILSON, RYAN & CAMPILONGO

MOXON & BARTILSON

By: ______________________________
Laurie J. Bartilson

Attorneys for Plaintiff
CHURCH OF SCIENTOLOGY
INTERNATIONAL

APPROVED AS TO FORM:

By: ______________________________
Ford Greene, Esq.
HUB LAW OFFICES
Attorney for Defendants
GERALD ARMSTRONG and THE GERALD
ARMSTRONG CORPORATION

By: ______________________________
Michael Walton, Esq.
Attorney for Defendants MICHAEL
WALTON and SOLINA WALTON

separate statement, thus there is nothing "new or different" to support this argument.

Dated: December ____, 1995

GARY W. THOMAS
Judge of the Superior Court

Submitted by:

Andrew H. Wilson
WILSON, RYAN & CAMPILONGO

MOXON & BARTILSON

By:______________________________
Laurie J. Bartilson

Attorneys for Plaintiff
CHURCH OF SCIENTOLOGY
INTERNATIONAL

APPROVED AS TO FORM:

By:______________________________
Ford Greene, Esq.
HUB LAW OFFICES
Attorney for Defendants
GERALD ARMSTRONG and THE GERALD
ARMSTRONG CORPORATION

By:______________________________
Michael Walton, Esq.
Attorney for Defendants MICHAEL
WALTON and SOLINA WALTON

PROOF OF SERVICE

I declare that I am employed in the City and County of San Francisco, California.

I am over the age of eighteen years and not a party to the within entitled action. My business address is 115 Sansome Street, Suite 400, San Francisco, California.

On February 2, 1996, I caused the attached copy of **NOTICE OF ENTRY OF ORDER RE DEFENDANT GERALD ARMSTRONG'S MOTION FOR RECONSIDERATION OF ENTRY OF PERMANENT INJUNCTION** on the following in said cause, by placing for deposit with the United States Postal Service on this day in the ordinary course of business, true copies thereof enclosed in sealed envelopes. The envelopes were addressed as follows:

Gerald Armstrong
715 Sir Francis Drake Blvd.
San Anselmo, California 94960

Michael Walton
700 Larkspur Landing Circle, #120
Larkspur, CA 94939

I declare under the penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed at San Francisco, California on February 2, 1996.

Colleen Palmer
Colleen Y. Palmer

9650

FILED

FEB - 5 1996

HOWARD HANSON
MARIN COUNTY CLERK
BY M. MOORE, DEPUTY

ANDREW H. WILSON, ESQ., State Bar #063209
LINDA M. FONG, ESQ., State Bar #124232
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Attorneys for Plaintiff

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF MARIN

CHURCH OF SCIENTOLOGY INTERNATIONAL, a California not-for-profit religious corporation, Plaintiff, v. GERALD ARMSTRONG, et al., Defendants.	Case No. 157 680 [CONSOLIDATED] **NOTICE OF ENTRY OF ORDER RE MOTION OF PLAINTIFF FOR SUMMARY ADJUDICATION OF ISSUES**

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that on January 24, 1996 the attached Order Re Motion of Plaintiff for Summary Adjudication of Issues was signed by the Honorable Gary W. Thomas and filed in the above-entitled court on January 30, 1996.

DATED: February 1, 1996

WILSON, RYAN & CAMPILONGO

By: ______________________
ANDREW H. WILSON,
Attorneys for Plaintiff CHURCH OF SCIENTOLOGY INTERNATIONAL

PROOF OF SERVICE

I declare that I am employed in the City and County of San Francisco, California.

I am over the age of eighteen years and not a party to the within entitled action. My business address is 115 Sansome Street, Suite 400, San Francisco, California.

On February 2, 1996, I caused the attached copy of **NOTICE OF ENTRY OF ORDER RE MOTION OF PLAINTIFF FOR SUMMARY ADJUDICATION OF ISSUES** on the following in said cause, by placing for deposit with the United States Postal Service on this day in the ordinary course of business, true copies thereof enclosed in sealed envelopes. The envelopes were addressed as follows:

Gerald Armstrong
715 Sir Francis Drake Blvd.
San Anselmo, California 94960

Michael Walton
700 Larkspur Landing Circle, #120
Larkspur, CA 94939

I declare under the penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed at San Francisco, California on February 2, 1996.

Colleen Palmer
Colleen Y. Palmer

1-30-96

FILED

JAN 30 1996 9652

[illegible]
MARIN COUNTY CLERK
BY: E Keswick Deputy

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Attorneys for Plaintiff
CHURCH OF SCIENTOLOGY INTERNATIONAL

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF MARIN

CHURCH OF SCIENTOLOGY INTERNATIONAL, a California not-for-profit religious corporation,

Plaintiff,

v.

GERALD ARMSTRONG, et al.,

Defendants.

Case No. 157 680

[CONSOLIDATED]

Grant
[~~PROPOSED~~] **ORDER RE MOTION OF PLAINTIFF FOR**
Sum of Adj of Issues

DEPT: 1
Summary of adjudication
Trial Date: None

WILSON, RYA CAMPILONGO
115 Sansome Street, Suite 400
San Francisc alifornia 94104

This matter came on for hearing on December 1, 1995, on motion of Plaintiff Church of Scientology International for (1) Summary Adjudication of the First Cause of Action of Armstrong's First Amended Complaint; (2) Severance; (3) Dismissal of Unadjudicated Claims; and (4) Entry of Final Judgment.

Plaintiff Church of Scientology International appeared by its attorneys, Andrew H. Wilson of Wilson, Ryan & Campilongo and Laurie J. Bartilson of Moxon & Bartilson. Defendant Armstrong appeared by his attorney, Ford Greene. Having read and considered the moving and opposing papers, and the evidence and arguments presented therein and at the hearing, and good cause appearing:

IT IS ORDERED:

1. The Motion of Plaintiff for Summary Adjudication of the First Cause of Action of the Armstrong's First Amended Cross-complaint is DENIED. As to the first cause of action of defendant's cross-complaint, plaintiff has failed to meet its burden of showing that the Court has determined the enforceability of paragraphs 7I and 18E of the Settlement Agreement. The motions directed at the fourth, sixth, thirteenth, sixteenth, seventeenth and nineteenth causes of action only involved paragraph 7D of the Settlement Agreement. (See plaintiff's Exhibits C and D to Request for Judicial Notice.) Defendant does not dispute that "paragraphs 4A and 4B concern an appeal which has already become final, and as a to which no rights, duties or obligations could be enforced in the future." (See plaintiff's Separate Statement of Undisputed Facts, Number 3) The Order of Permanent Injunction did not find violations of paragraphs 7I and 18E. (See plaintiff's Request for Judicial Notice, Exhibit E, p. 2, ¶4.);

2. Plaintiff's motion is sever is GRANTED. The Fraudulent Conveyance Action (original Marin County Superior Court Case No. 157680) is severed from the Breach of Contract Action (original Marin County Superior Court Case No. 152229, also Los Angeles Superior Court Case No. BC 052395). Further, all activity in the Fraudulent Conveyance Action is STAYED during the pendency of Armstrong's bankruptcy case;

3. The first, second, third, fifth, seventh, eighth, ninth, tenth, eleventh, twelfth, fourteenth, fifteenth and eighteenth causes of action of plaintiff's Second Amended Complaint for breach of contract are DISMISSED without prejudice, pursuant to C.C.P. §581(c);

4. The Clerk of the Court is directed to ENTER FINAL JUDGMENT in favor of plaintiff in accordance with the Orders of Summary Adjudication and Permanent Injunction attached hereto as Exhibits A, B and C;

5. Plaintiff, Church of Scientology International, is ADJUDICATED the prevailing party in this action, pursuant to Civil Code Section 1717, and is awarded its attorney's fees and costs pursuant to that section and the contract between the parties.

Dated: 1-24, 1996

GARY W. THOMAS

GARY W. THOMAS
JUDGE OF THE SUPERIOR COURT

Submitted by:

Laurie Bartilson
MOXON & BARTILSON

WILSON, RYAN & CAMPILONGO

BY: ______________________________
Andrew H. Wilson

Attorneys for Plaintiff
CHURCH OF SCIENTOLOGY
INTERNATIONAL

APPROVED AS TO FORM:

By: ______________________________
Ford Greene, Esq.
HUB LAW OFFICES
Attorney for Defendants
GERALD ARMSTRONG and THE GERALD
ARMSTRONG CORPORATION

By: ______________________________
Michael Walton, Esq.
Attorney for Defendants MICHAEL
WALTON and SOLINA WALTON

WILSON, RYAN & CAMPILONGO

MOXON & BARTILSON

By:______________________________
Laurie J. Bartilson

Attorneys for Plaintiff
CHURCH OF SCIENTOLOGY
INTERNATIONAL

APPROVED AS TO FORM:

By:______________________________
Ford Greene, Esq.
HUB LAW OFFICES
Attorney for Defendants
GERALD ARMSTRONG and THE GERALD
ARMSTRONG CORPORATION

By:______________________________
Michael Walton, Esq.
Attorney for Defendants MICHAEL
WALTON and SOLINA WALTON

EXHIBIT A

SUPERIOR COURT, MARIN COUNTY, CALIFORNIA

LAW & MOTION, CIVIL CALENDAR

RULINGS

TIME: 9:00 DATE: 1/27/95 DEPT: 1

JUDGE: GARY W. THOMAS REPORTER: E. PASSARIS CLERK: J. BENASSINI

CASE NO: 157680 TITLE OF ACTION: CHURCH OF SCIENTOLOGY V. GERALD ARMSTRONG

THE MOTION OF PLAINTIFF FOR SUMMARY ADJUDICATION OF ISSUES IS GRANTED AS TO THE FOURTH AND SIXTH CAUSES OF ACTION AND DENIED AS TO THE ELEVENTH CAUSE OF ACTION.

AS TO ALL CAUSES OF ACTION, DEFENDANT FAILS TO RAISE A TRIABLE ISSUE AS TO WHETHER THE LIQUIDATED DAMAGES PROVISION IS INVALID. DEFENDANT RELIES ON THE LAW AS IT EXISTED PRIOR TO JULY 1, 1978. (SEE *UNITED SAV. & LOAN ASSN. V. REEDER DEV. CORP.* (1976) 57 CAL.APP.3D 282 AND EARLIER VERSIONS OF CIV. CODE, §§ 1670 AND 1671.) THE LAW NOW PRESUMES THAT LIQUIDATED DAMAGES PROVISIONS ARE "VALID UNLESS THE PARTY SEEKING TO INVALIDATE THE PROVISION ESTABLISHES THAT THE PROVISION WAS UNREASONABLE UNDER THE CIRCUMSTANCES EXISTING AT THE TIME THE CONTRACT WAS MADE." (CIV. CODE, § 1671, SUBD. (b).) DEFENDANT'S EVIDENCE IS NOT SUFFICIENT TO RAISE A TRIABLE ISSUE IN THAT REGARD. ALTHOUGH DEFENDANT STATES IN HIS DECLARATION THAT HE WAS NOT INVOLVED IN NEGOTIATING THE PROVISION (SEE D'S EX. 1, ¶12), HE GOES ON TO STATE THAT HE DISCUSSED THE PROVISION WITH TWO ATTORNEYS BEFORE SIGNING THE AGREEMENT. (*ID.*, ¶¶12-13.) THUS, HE CLEARLY KNEW OF THE PROVISION YET CHOSE TO SIGN IT. HE HAS NOT SHOWN THAT HE HAD UNEQUAL BARGAINING POWER OR THAT HE MADE ANY EFFORTS TO BARGAIN OR NEGOTIATE WITH RESPECT TO THE PROVISION. (SEE *H. S. PERLIN CO. V. MORSE SIGNAL DEVICES* (1989) 209 CAL.APP.3D 1289.) DEFENDANT NEXT STATES THAT PLAINTIFF'S ACTUAL DAMAGES ARE ZERO. (D'S EX. 1, ¶12.) HOWEVER, "THE AMOUNT OF DAMAGES ACTUALLY SUFFERED HAS NO BEARING ON THE VALIDITY OF THE LIQUIDATED DAMAGES PROVISION..." (SEE LAW REVISION COMMISSION COMMENT TO § 1671.) FINALLY, DEFENDANT POINTS TO THE FACT THAT OTHER SETTLEMENT AGREEMENTS CONTAIN A $10,000 LIQUIDATED DAMAGES PROVISION. (SEE D'S EXS. 2C AND 2D.) THIS ALONE IS NOT SUFFICIENT TO RAISE A TRIABLE ISSUE IN THAT DEFENDANT HAS NOT SHOWN THAT CIRCUMSTANCES DID NOT CHANGE BETWEEN 12/86 AND 4/87 AND THAT THOSE SETTLING PARTIES STAND IN THE SAME OR SIMILAR POSITION TO DEFENDANT (I.E., THAT THEY WERE AS HIGH UP IN THE ORGANIZATION AND COULD CAUSE AS MUCH DAMAGE BY SPEAKING OUT AGAINST PLAINTIFF OR THAT THEY HAVE/HAD ACCESS TO AS MUCH INFORMATION AS DEFENDANT).

SUPERIOR COURT, MARIN COUNTY, CALIFORNIA
LAW & MOTION, CIVIL CALENDAR
RULINGS

PAGE: 4-A

TIME: 9:00
DATE: 1/27/95
DEPT: 1
JUDGE: GARY W. THOMAS
REPORTER: E. PASSARIS
CLERK: J. BENASSINI
CASE NO: 157680
TITLE OF ACTION: CHURCH OF SCIENTOLOGY V. GERALD ARMSTRONG

DEFENDANT ALSO HAS NOT RAISED A TRIABLE ISSUE REGARDING DURESS. DEFENDANT'S OWN DECLARATION SHOWS HE DID NOT EXECUTE THE AGREEMENT UNDER DURESS IN THAT IT SHOWS THAT HE CAREFULLY WEIGHED HIS OPTIONS. (SEE D'S EX. 1, ¶10.) IT CERTAINLY DOES NOT SHOW THAT HE DID SOMETHING AGAINST HIS WILL OR HAD "NO REASONABLE ALTERNATIVE TO SUCCUMBING." (SEE *IN RE MARRIAGE OF BALTINS* (1989) 212 CAL.APP.3D 66, 84.) IN ADDITION, DEFENDANT IS RELYING ON THE CONDUCT OF A THIRD PARTY (FLYNN) TO ESTABLISH DURESS, YET HE SETS FORTH NO FACT OR EVIDENCE IN HIS SEPARATE STATEMENT SHOWING THAT PLAINTIFF HAD REASON TO KNOW OF THE DURESS. (SEE *LEEPER* V. *BELTRAMI* (1959) 53 CAL.2D 195, 206.)

AS TO THE FOURTH CAUSE OF ACTION, CONTRARY TO DEFENDANT'S ARGUMENT, THE SUBJECT DECLARATION DOES MORE THAN MERELY AUTHENTICATE DOCUMENTS. (SEE P'S EX. 1(A)(11), ¶¶1-3.) THE COURT FINDS THAT THE DECLARATION CONSTITUTES A DISCLOSURE OF DEFENDANT'S "EXPERIENCES WITH" PLAINTIFF OR "KNOWLEDGE OR INFORMATION" CONCERNING PLAINTIFF AND HUBBARD. (SEE P'S EX. 1B, ¶7D.) DEFENDANT FAILS TO RAISE A TRIABLE ISSUE REGARDING OBSTRUCTION OF JUSTICE/SUPPRESSION OF EVIDENCE. THE SETTLEMENT AGREEMENT EXPRESSLY DOES NOT PROHIBIT DEFENDANT FROM DISCLOSING INFORMATION PURSUANT TO SUBPOENA OR OTHER LEGAL PROCESS. (SEE P'S EX. 1B, ¶7H; CONTRAST WITH PEN. CODE, §§ 136.1 AND 138, *WILLIAMSON* V. *SUPERIOR COURT* (1978) 21 CAL.3D 829, *PEOPLE* V. *PIC'L* (1982) 31 CAL.3D 731.) NOR IS PLAINTIFF IN THIS CAUSE OF ACTION SEEKING TO PROHIBIT DISCLOSURE TO GOVERNMENT AGENCIES CONDUCTING INVESTIGATIONS PURSUANT TO STATUTORY OBLIGATIONS. (CONTRAST WITH *MARY R.* V. *B. & R. CORP.* (1983) 149 CAL.APP.3D 308 AND *ALLEN* V. *JORDANOS' INC.* (1975) 52 CAL.APP.3D 160.) EVEN IF A PORTION OF THE AGREEMENT COULD BE CONSTRUED TO SO PROHIBIT (SEE, E.G., ¶10), PLAINTIFF IS NOT RELYING ON THAT SECTION. NOR HAS DEFENDANT SHOWN THAT THE PROVISION IS SO SUBSTANTIAL AS TO RENDER THE ENTIRE CONTRACT ILLEGAL. (CONTRAST WITH *ALLEN, SUPRA*, 52 CAL.APP.3D AT 166.

SUPERIOR COURT, MARIN COUNTY, CALIFORNIA
LAW & MOTION, CIVIL CALENDAR
RULINGS

PAGE: 4-A

TIME: 9:00 DATE: 1/27/95 DEPT: 1
JUDGE: GARY W. THOMAS REPORTER: E. PASSARIS CLERK: J. BENASSINI
CASE NO: 157680 TITLE OF ACTION: CHURCH OF SCIENTOLOGY V. GERALD ARMSTRONG

AS TO THE SIXTH CAUSE OF ACTION, DEFENDANT FAILS TO RAISE A TRIABLE ISSUE REGARDING THE CNN INTERVIEW. DEFENDANT ADMITTED IN HIS DEPOSITION THAT HIS CONVERSATION WITH CNN INVOLVED KNOWLEDGE HE HAD GAINED BECAUSE OF HIS YEARS OF EXPERIENCE WITH THE ORGANIZATION (P'S EX. 1A AT 344:1-4), THUS REFUTING HIS ARGUMENTS THAT HIS STATEMENT WAS BASED ON KNOWLEDGE ACQUIRED AFTER THE SETTLEMENT AGREEMENT AND THAT HIS INTERVIEW WAS DIRECTLY RELATED TO THE INSTANT LITIGATION. IN ADDITION, PLAINTIFF SET FORTH NO FACTS OR EVIDENCE IN HIS SEPARATE STATEMENT SHOWING THAT HE COULD DISCLOSE INFORMATION ACQUIRED AFTER EXECUTION OF THE SETTLEMENT AGREEMENT OR THAT HE COULD MAKE SUCH STATEMENTS IN THE CONTEXT OF FUTURE LITIGATION. FINALLY, THERE IS NOTHING IN THE STATEMENT WHICH TIES IT TO EITHER OF THE ARGUMENTS RAISED BY DEFENDANT. DEFENDANT ALSO FAILS TO RAISE A TRIABLE ISSUE REGARDING THE AMERICAN LAWYER INTERVIEW. DEFENDANT'S CLAIM THAT HE ONLY DISCUSSED THE INSTANT LITIGATION IS REFUTED BY HIS OWN ADMISSION THAT HE DISCUSSED "THE PLIGHT OF THE ORGANIZATION [AND] WHAT IT WOULD TAKE TO END ITS LEGAL TROUBLES." (D'S EX. 1D AT 352:15-19.) DEFENDANT'S CLAIM THAT HIS DISCUSSION INVOLVED "NOTHING MORE THAN WHAT JUDGE BRECKENRIDGE STATED IN HIS DECISION IN ARMSTRONG I" IS REFUTED BY HIS ADMISSION THAT HE DID NOT RECALL DISCUSSING THE BRECKENRIDGE OPINION WITH THE REPORTER. (D'S EX. 1D AT 358:20-23.) FURTHER, DEFENDANT POINTS TO NOTHING IN JUDGE BRECKENRIDGE'S OPINION WHICH COINCIDES TO THOSE MATTERS DISCUSSED BY DEFENDANT.

AS TO THE ELEVENTH CAUSE OF ACTION, PLAINTIFF HAS NOT SHOWN THAT DEFENDANT VIOLATED PARAGRAPH 7D OF THE SETTLEMENT AGREEMENT. THE DECLARATION RELIED ON BY PLAINTIFF (P'S EX. 1(A)(B)) DOES NOT DISCLOSE DEFENDANTS "EXPERIENCES WITH THE CHURCH OF SCIENTOLOGY [OR] ANY KNOWLEDGE OR INFORMATION HE MAY HAVE CONCERNING THE CHURCH OF SCIENTOLOGY..."

SUPERIOR COURT, MARIN COUNTY, CALIFORNIA
LAW & MOTION, CIVIL CALENDAR
RULINGS

PAGE: 4-A

TIME:	9:00	**DATE:**	1/23/95	**DEPT:**	1
JUDGE:	GARY W. THOMAS	**REPORTER:**	3. PASSARIS	**CLERK:**	J. BENASSINI

CASE NO: 157680 **TITLE OF ACTION:** CHURCH OF SCIENTOLOGY V. GERALD ARMSTRONG

DEFENDANT ARMSTRONG FILED A SUPPLEMENTAL DECLARATION AND EVIDENCE SIX DAYS LATE. THE COURT DID NOT PERMIT SAME. THE PLAINTIFF'S MOTION TO STRIKE THE SUPPLEMENTAL PAPERS FROM THE FILE IS GRANTED. PLAINTIFF'S REQUEST FOR SANCTIONS IS GRANTED. DEFENDANTS KNEW THE LATENESS OF THE FILING, SOME SIX DAYS. THERE WAS AMPLE TIME TO SEEK THE COURT'S PERMISSION FOR A LATE FILING. PERMISSION WAS NOT SOUGHT. SANCTIONS REQUESTED BY PLAINTIFF PURSUANT TO SECTION 437C(i) ARE GRANTED IN THE AMOUNT OF $[illegible], AS THE COURT FINDS THIS SIX-DAYS LATE FILING TO BE IN BAD FAITH.

EXHIBIT B

FILED

OCT 17 1995

HOWARD HANSON
MARIN COUNTY CLERK
by J. Steele, Deputy

Andrew H. Wilson, SBN 063209
WILSON, RYAN & CAMPILONGO
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Telefax: (213) 953-3351

Attorneys for Plaintiff
CHURCH OF SCIENTOLOGY
INTERNATIONAL

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF MARIN

CHURCH OF SCIENTOLOGY INTERNATIONAL, a California not-for-profit religious corporation, Plaintiff, vs. GERALD ARMSTRONG; DOES 1 through 25, inclusive, Defendants.	CASE NO. BC 157680 [PROPOSED] ORDER OF SUMMARY JUDGMENT AS TO THE THIRTEENTH, SIXTEENTH, SEVENTEENTH, AND NINETEENTH CAUSES OF ACTION DATE: October 6, 1995 TIME: 9:00 a.m. DEPT: 1 TRIAL DATE: Vacated

This matter came on for hearing on October 6, 1995, on motion of plaintiff Church of Scientology International ("the Church") for Summary Adjudication of the Thirteenth, Sixteenth, Seventeenth, and Nineteenth Causes of Action of the Second Amended Complaint. Plaintiff Church of Scientology International appeared by its attorneys, Andrew H. Wilson of Wilson, Ryan & Campilongo and Laurie J. Bartilson of Bowles & Moxon, defendant Armstrong appeared by his attorney, Ford Greene. Having read and considered the moving and opposing papers, and the evidence and arguments presented therein and at the hearing, and good cause appearing:

IT IS ORDERED:

1. The Motion of Plaintiff for Summary Adjudication of Issues as to the Thirteenth, Sixteenth, Seventeenth, and Nineteenth Causes of Action of the Second Amended Complaint is GRANTED in favor of Plaintiff, Church of Scientology International, and against Defendant, Gerald Armstrong, in the amount of $200,000.

Plaintiff has met its burden of showing that defendant breached the settlement agreement and that it is entitled to liquidated damages of $50,000 for each breach. Defendant has failed to raise a triable issue as to any of the causes of action, as follows:

INVALIDITY OF LIQUIDATED DAMAGES PROVISION: Defendant's evidence regarding his attorneys' failure to represent his interests (see Facts 43 and 68) is hearsay and/or not based on personal knowledge. The opinion of defendant's attorney as to the validity of the provision (see, e.g., Facts 52-54, 57-60) is irrelevant and hearsay. The fact that two other clients signed a settlement agreement containing the same liquidated damages amount (see Facts 55-56 and 63-64) does not raise an inference that the provision was unreasonable. Defendant's evidence is insufficient to raise a reasonable inference of unequal bargaining power (no personal knowledge shown that plaintiff, as opposed to Flynn, positioned defendant as a "deal breaker"; Flynn's statements hearsay; no personal knowledge shown of plaintiff's wealth; wealth alone does not raise inference of unequal bargaining power since no showing defendant desparate for money and had to accept on plaintiff's terms). Defendant's evidence does not raise an inference that plaintiff's calculation is "unfathomable" (Fourteenth Cause of Action seeks $50,000 for each of 18 letters; Nineteenth Cause of Action is based only on declarations, not on other contacts between defendant and attorney/other clients). Defendant fails to establish how he knows plaintiff had not been injured by his statements at the time of settlement.

DURESS: Flynn's statements to defendant are hearsay. (See, e.g., D's Facts 1C and 1D.) Further, defendant has not shown that plaintiff was aware of Flynn's purported duress of defendant. (See *Leeper v. Beltrami* (1959) 53 Cal.2d 195, 206.) Contrary to defendant's statement about duress, "careful weighing of options" is completely inconsistent with an absence "of the free exercise of his will power" or his having "no reasonable alternative to succumbing." (See *Philippine Expert & Foreign Loan Guarantee Corp. v. Chuidian* (1990) 218 Cal.App.3D 1058, 1078; *In Re Marriage of Baltins* (1989) 212 Cal.App.3D 66, 84.)

FRAUD: Flynn's statements to defendant (see Fact 78) are hearsay. The Court finds that the portions of the agreement cited by defendant (see Facts 79 and 80) do not establish a mutual confidentiality requirement. Paragraph 7(I) only prohibits the parties from disclosing information in litigation between the parties; paragraph 18(D) only prohibits disclosure of the terms of the settlement; defendant has not shown that plaintiff did either of those things. Further, "[s]omething more than nonperformance is required to prove the defendant's intention not to perform his promise." (*Tenzer v. Superscope, Inc.* (1985) 39 Cal.3d 18, 30-31).

NO SPECIFIC PERFORMANCE, BREACH OF EXPRESS AND IMPLIED COVENANT: Defendant relies on the purported mutuality requirement, which he has failed to establish.

FIRST AMENDMENT: First Amendment rights may be waived by contract. (See *ITT Telecom Products Corp. v. Dooley* (1989) 214 Cal.App.3D 307, 319.)

2. The plaintiff has asked that the exhibits which were previously ordered sealed be stricken as they are trade secrets, irrelevant to this motion. This request is GRANTED. They are not relevant. Further, they were filed by Mr. Armstrong *in pro per* when he is, in fact, represented by counsel.

Dated: October ___, 1995

OCT 17 1995

GARY W. THOMAS

GARY W. THOMAS
Judge of the Superior Court

Approved as to form:

Ford Greene
Attorney for Defendants Gerald
Armstrong and the Gerald Armstrong
Corporation

EXHIBIT C

9668

FILED
OCT 17 1995
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CHURCH OF SCIENTOLOGY
INTERNATIONAL

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF MARIN

CHURCH OF SCIENTOLOGY INTERNATIONAL, a California not-for-profit religious corporation,

Plaintiff,

vs.

GERALD ARMSTRONG; DOES 1 through 25, inclusive,

Defendants.

CASE NO. BC 157680

~~[PROPOSED]~~ GWT. 10/17/95

ORDER OF PERMANENT INJUNCTION

DATE: October 6, 1995
TIME: 9:00 a.m.
DEPT: 1

TRIAL DATE: Vacated

This matter came on for hearing on October 6, 1995, on motion of plaintiff Church of Scientology International ("the Church") for Summary Adjudication of the Twentieth Cause of Action of the Second Amended Complaint. Plaintiff Church of Scientology International appeared by its attorneys, Andrew H. Wilson of Wilson, Ryan & Campilongo and Laurie J. Bartilson of Bowles & Moxon, defendant Armstrong appeared by his attorney, Ford Greene. Having read and considered the moving and opposing papers, and the evidence and arguments presented therein and at the hearing, and good cause appearing:

IT IS ORDERED:

The Church's motion for summary adjudication of the twentieth cause of action of the Second Amended Complaint is GRANTED. The Court finds that there is no triable issue of material fact as to any of the following:

1. Plaintiff and defendant freely and voluntarily entered into a Mutual Release of All Claims and Settlement Agreement ("Agreement") in December, 1986.

2. Plaintiff performed all of its obligations pursuant to the Agreement.

3. Defendant Armstrong received substantial consideration for the promises which he made in the Agreement.

4. Since 1990, defendant Armstrong has repeatedly breached paragraphs 7(D), 7(E), 7(H), 7(G), 10, 18(D) and 20 of the Agreement.

5. Between 1991 and the present, Armstrong breached paragraphs 7(G), 7(H) and 10 of the Agreement by providing voluntary assistance, exclusive of testimony made pursuant to a valid subpoena, to the following private individuals, each of whom was pressing a claim or engaged in litigation with plaintiff and/or one or more of the designated beneficiaries of the Agreement:

- Vicki and Richard Aznaran, anti-Scientology litigants in the case of Vicki Aznaran, et al. v. Church of Scientology International, United States District Court for the Central District of California, Case No. CV 88-1786 (JMI) [Sep.St.Nos. 11-16];
- Joseph A. Yanny, anti-Scientology litigant in the case of Religious Technology Center et al. v. Joseph Yanny, et al., Los Angeles Superior Court No. C 690211 and Religious Technology Center et al. v. Joseph Yanny, et al., Los Angeles Superior Court No. BC 033035 [Sep.St.Nos. 17-

20];

- Malcolm Nothling, anti-Scientology litigant in the matter between Malcolm Nothling and the Church of Scientology in South Africa, Adi Codd, Diane Kemp, Glen Rollins; Supreme Court of South Africa (Witwetzbsrand Local Division) Case No. 19221/88. [Sep.St.Nos. 21-24];
- Reader's Digest Corporation, anti-Scientology litigant in the case of Church of Scientology of Lausanne vs. Kiosk AG, Basel, Switzerland [Sep.St.Nos. 25-26];
- Richard Behar, anti-Scientology litigant in the case of Church of Scientology International v. Time Warner, Inc.; Time Inc. Magazine Company and Richard Behar, United States District Court, Southern District of New York, Case No. 92 Civ. 3024 PKL [Sep.St.Nos. 27-28];
- Steven Hunziker, anti-Scientology litigant in the case of Hunziker v. Applied Materials, Inc., Santa Clara Superior Court Case No. 692629 [Sep.St.Nos. 29-33];
- David Mayo, anti-Scientology litigant in the case of Religious Technology Center v. Robin Scott, et al., United States District Court for the Central District of California, Case No. 85-711 [Sep.St.Nos. 34-35];
- Cult Awareness Network, anti-Scientology litigant in the case of Cult Awareness Network v. Church of Scientology International, et al., Circuit Court of Cook County, Illinois, No. 94L804 [Sep.St.Nos. 38-39];
- Lawrence Wollersheim, anti-Scientology litigant in the cases of Lawrence Wollersheim v. Church of Scientology of California, Los Angeles Superior Court Number C332027 and Church of Scientology of California v. Lawrence Wollersheim, Los Angeles Superior Court Number BC074815 [Sep.St.Nos. 40-42];
- Ronald Lawley, anti-Scientology litigant in the cases of Religious Technology Center, et al. vs. Robin Scott, et al., U.S. District Court, Central

District of California, Case No. 85-711 MRP(Bx); Matter Between Church of Scientology Advanced Organization Saint Hill Europe and Africa, and Robin Scott, Ron Lawley, Morag Bellmaine, Stephen Bisbey in the High Court of Justice Queen's Bench Division, Case 1984 S No. 1675; and Matter Between Church of Scientology Religious Education College Inc., and Nancy Carter, Ron Lawley, Steven Bisbey, in the High Court of Justice Queen's Bench Division, Case 1986 C No. 12230 [Sep.St.Nos. 43-44];

- Uwe Geertz and Steven Fishman, anti-Scientology litigants in the case of Church of Scientology International v. Steven Fishman, et al., United States District Court for the Central District of California Number 91-6426 HLH(Tx) [Sep.St.Nos. 45-46];
- Tilly Good, a claimant against the Church of Scientology, Mission of Sacramento Valley [Sep.St.Nos. 36-37];
- Denise Cantin, a claimant against the Church of Scientology of Orange County; Church of Scientology of Boston; and Church of Scientology, Flag Service Organization [Sep.St.Nos. 36-37]; and
- Ed Roberts, a claimant against the Church of Scientology of Stevens Creek [Sep.St.Nos. 36-37].

6. Between 1992 and the present, Armstrong breached paragraph 7(D) of the Agreement by contacting media representatives, granting interviews and attempting to assist media representatives in the preparation for publication or broadcast magazine articles, newspaper articles, books, radio and television programs, about or concerning the Church and/or other persons and entities referred to in paragraph 1 of the Agreement. These media representatives included:

- Cable Network News: reporter Don Knapp, in March, 1992 [Sep.St.Nos. 47-48];
- American Lawyer Magazine: reporter Bill Horne, in March, 1992

[Sep.St.No. 49];

- Los Angeles Times: reporter Bob Welkos, in May, 1992; and reporter Joel Sappell, in June, 1993 [Sep.St.Nos. 50-51];
- CAN Video Interview, with anti-Scientologists "Spanky" Taylor and Jerry Whitfield, in November, 1992 [Sep.St.No. 52];
- KFAX Radio: interview planned but prevented in April, 1993 [Sep.St.No. 53];
- Newsweek Magazine: reporter Charles Fleming, in June, 1993 and August, 1993 [Sep.St.No. 54-56];
- Daily Journal: reporter Mike Tipping, in June, 1993 [Sep.St.No. 57];
- Time Magazine: reporter Richard Behar, in March, 1992 and in June, 1993 [Sep.St.Nos. 58-59];
- San Francisco Recorder: reporter Jennifer Cohen, in August, 1993 [Sep.St.No. 60];
- E! Entertainment Network: reporter Greg Agnew, in August, 1993 [Sep.St.No. 61];
- WORD Radio: Pittsburgh, Pennsylvania, interviewed in the fall of 1993 [Sep.St.No. 62];
- St. Petersburg Times: St. Petersburg, Florida, reporter Wayne Garcia, in the fall of 1993 [Sep.St.No. 63];
- Premiere Magazine: letter to the editor, in October, 1993 [Sep.St.No. 64];
- Mirror-Group Newspapers: United Kingdom, in May, 1994 [Sep.St.No. 65];
- Gauntlet Magazine: New York, New York, reporter Rick Cusick in June, 1994 [Sep.St.No. 66];
- Pacific Sun Newspaper; reporter Rick Sine, in June and July, 1994 [Sep.St.No. 67];

- Disney Cable: reporter Marsha Nix, in August, 1994 [Sep.St.No. 68]; and

- Tom Voltz: Swiss author writing a book about Scientology, in October, 1994 [Sep.St.No. 69].

7. Between 1992 and the present, Armstrong breached paragraph 7(D) of the Agreement by preparing and distributing at least three manuscripts concerning his claimed experiences in and with Scientology, including a treatment for a screenplay which he intends to turn into a film [Sep.St.Nos.70-71].

8. Between 1991 and the present, Armstrong further breached paragraph 7(D) of the Agreement by disclosing his claimed experiences in and with Scientology to each of the following persons or groups, not previously identified: Robert Lobsinger [Sep.St.No. 72]; the New York Times [Sep.St.No. 73]; Toby Plevin, Stuart Culter, Anthony Laing, Kent Burtner, and Margaret Singer [Sep.St.No. 74]; Priscilla Coates [Sep.St.No. 75]; Omar Garrison [Sep.St.No. 76]; Vaughn and Stacy Young [Sep.St.No. 77]; a Stanford University psychology class [Sep.St.No. 78]; attendees at the 1992 Cult Awareness Network Convention [Sep.St.No. 79]; and Hana Whitfield [Sep.St.No. 80].

9. Defendant Armstrong has reiterated numerous times that he intends to continuing breaching the Agreement unless he is ordered by the Court to cease and desist [Sep.St.Nos. 87-97].

10. Plaintiff's legal remedies are inadequate insofar as the scope of the relief ordered below is concerned. Tamarind Lithography Workshop, Inc. v. Sanders (1983) 143 Cal.App.3d 571, 577-578, 193 Cal.Rptr. 409, 413.

Accordingly, the Court finds that entry of a permanent injunction in this action is necessary in this action because pecuniary compensation could not afford the Church adequate relief, and the restraint is necessary in order to prevent a multiplicity of actions for breach of contract. Civil Code § 3422(1),(3). A ORDER of injunction is therefore entered as follows:

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Defendant Gerald Armstrong, his agents, employees, and persons acting in concert or conspiracy with him are restrained and enjoined from doing directly or indirectly any of the following:

1. Voluntarily assisting any person (not a governmental organ or entity) intending to make, intending to press, intending to arbitrate, or intending to litigate a claim, regarding such claim or regarding pressing, arbitrating, or litigating it, against any of the following persons or entities:

- The Church of Scientology International, its officers, directors, agents, representatives, employees, volunteers, successors, assigns and legal counsel;
- The Church of Scientology of California, its officers, directors, agents, representatives, employees, volunteers, successors, assigns and legal counsel;
- Religious Technology Center, its officers, directors, agents, representatives, employees, volunteers, successors, assigns and legal counsel;
- The Church of Spiritual Technology, its officers, directors, agents, representatives, employees, volunteers, successors, assigns and legal counsel;
- All Scientology and Scientology affiliated Churches, organizations and entities, and their officers, directors, agents, representatives, employees, volunteers, successors, assigns and legal counsel;
- Author Services, Inc., its officers, directors, agents, representatives, employees, volunteers, successors, assigns and legal counsel;
- The Estate of L. Ron Hubbard, its executor, beneficiaries, heirs, representatives, and legal counsel; and/or
- Mary Sue Hubbard;

(Hereinafter referred to collectively as "the Beneficiaries");

2. Voluntarily assisting any person (not a governmental organ or entity) defending a claim, intending to defend a claim, intending to defend an arbitration, or intending to defend any claim being pressed, made, arbitrated or litigated by any of the Beneficiaries, regarding such claim or regarding defending, arbitrating, or litigating against it;

3. Voluntarily assisting any person (not a governmental organ or entity) arbitrating or litigating adversely to any of the Beneficiaries;

4. Facilitating in any manner the creation, publication, broadcast, writing, filming audio recording, video recording, electronic recording or reproduction of any kind of any book, article, film, television program, radio program, treatment, declaration, screenplay or other literary, artistic or documentary work of any kind which discusses, refers to or mentions Scientology, the Church, and/or any of the Beneficiaries;

5. Discussing with anyone, not a member of Armstrong's immediate family or his attorney, Scientology, the Church, and/or any of the Beneficiaries;

In addition, it is ORDERED that, within 20 days of the issuance of this Order, Armstrong shall:

1. Return to the Church any documents which he now has in his possession, custody or control which discuss or concern Scientology, the Church and/or any person or entity referred to in paragraph 1 of the "Mutual Release of All Claims and Settlement Agreement" of December, 1986, other than documents which have been filed in this litigation.

It is further ORDERED that during the pendency of this litigation, documents which have been filed in this litigation may be retained by Armstrong's counsel. Those documents are to remain sealed, in the possession of Mr. Greene or any successor counsel, and may not be distributed to third parties. At the conclusion of the instant litigation, it is ORDERED that all documents from this case in counsel's possession which do not comprise counsel's work product will be delivered to counsel for plaintiff. Counsel's work product may be retained by Armstrong's counsel.

DATED: ____________, 1995
OCT 17 1995

GARY W. THOMAS
THE HONORABLE GARY W. THOMAS
SUPERIOR COURT JUDGE